

IDAHO ADMINISTRATIVE BULLETIN

Table of Contents - Volume 1

October 1, 2003 -- Volume 03-10

TABLE OF CONTENTS	1
PREFACE	10
<u>THE OFFICE OF THE GOVERNOR</u>	
Executive Order No. 2003-07	
Establishment Of The Statewide Interoperability Executive Council.....	19
Executive Order No. 2003-08	
Establishment Of The Idaho Homeland Security Council	21
<u>IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE</u>	
02.06.04 - Phytosanitary And Post-Entry Certification Rules	
Docket No. 02-0604-0301 (Fee Rule)	
Notice Of Rulemaking - Proposed Rule	23
02.06.06 - Rules Governing The Planting Of Beans (Phaseolus SPP.) In Idaho	
Docket No. 02-0606-0301 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	26
02.06.25 - Small Legume Seeds	
Docket No. 02-0625-0301	
Notice of Rulemaking - Proposed Rule.....	29
<u>IDAPA 07 - DIVISION OF BUILDING SAFETY</u>	
07.03.03 - Rules Governing Modular Buildings	
Docket No. 07-0303-0301	
Notice of Rulemaking - Temporary and Proposed Rule	30
07.03.08 - Rules Governing Commercial Coaches	
Docket No. 07-0308-0301	
Notice of Rulemaking - Temporary and Proposed Rule	33
07.03.12 - Rules Governing Manufactured Or Mobile Home Installations	
Docket No. 07-0312-0301	
Notice of Rulemaking - Temporary and Proposed Rule	35
07.05.01 - Rules Of The Public Works Contractors License Board	
Docket No. 07-0501-0301	
Notice of Rulemaking - Proposed Rule.....	36
07.07.01 - Rules Governing Installation Of Heating, Ventilation, And Air Conditioning Systems	
Docket No. 07-0701-0301 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	49
<u>IDAPA 08 - IDAHO STATE BOARD OF EDUCATION</u>	
08.01.08 - Miscellaneous Rules	

Docket No. 08-0108-0301	
Notice of Rulemaking - Proposed Rule.....	56
08.02.02 - Rules Governing Uniformity	
Docket No. 08-0202-0302 (Fee Rule)	
Notice Of Rulemaking - Proposed Rule.....	58
Docket No. 08-0202-0303	
Notice of Rulemaking - Proposed Rule.....	81
Docket No. 08-0202-0304	
Notice of Rulemaking - Proposed Rule.....	87
08.02.03 - Rules Governing Thoroughness	
Docket No. 08-0203-0301	
Notice of Rulemaking - Proposed Rule.....	93
<u>IDAPA 11 - IDAHO STATE POLICE</u>	
<u>IDAHO STATE RACING COMMISSION</u>	
11.04.01 - Rules Governing Horse Racing	
Docket No. 11-0401-0301	
Notice of Rulemaking - Temporary and Proposed Rule	104
11.04.02 - Rules Governing Simulcasting	
Docket No. 11-0402-0301	
Notice of Rulemaking - Temporary and Proposed Rule	108
11.05.01 - Rules Governing Alcohol Beverage Control	
Docket No. 11-0501-0301	
Notice of Rulemaking - Temporary and Proposed Rule	123
11.10.01 - Rules Governing The ILETS - Idaho Law Enforcement Teletypewriter System	
Docket No. 11-1001-0301	
Notice of Rulemaking - Proposed Rule.....	125
<u>IDAPA 13 - IDAHO FISH AND GAME COMMISSION</u>	
13.01.02 - Rules Governing Public Safety	
Docket No. 13-0102-0301	
Notice of Rulemaking - Temporary and Proposed Rule	137
13.01.04 - Rules Governing Licensing	
Docket No. 13-0104-0301	
Notice of Rulemaking - Temporary and Proposed Rule	139
13.01.08 - Rules Governing The Taking Of Big Game Animals In The State Of Idaho	
Docket No. 13-0108-0301	
Notice of Rulemaking - Temporary and Proposed Rule	149
Docket No. 13-0108-0302P	
Notice of Proposed Proclamation	157

Docket No. 13-0108-0303P Notice of Proposed Proclamation	158
13.01.09 Rules Governing The Taking Of Game Birds In The State Of Idaho	
Docket No. 13-0109-0301P Notice of Proposed Proclamation	155
Docket No. 13-0109-0302P Notice of Proposed Proclamation	160
13.01.11 - Rules Governing Fish	
Docket No. 13-0111-0301P Notice of Proposed Proclamation	161
13.01.12 - Rules Governing Commercial Fishing In The State Of Idaho	
Docket No. 13-0112-0301 Notice of Rulemaking - Temporary and Proposed Rule	162
<u>IDAPA 15 - OFFICE OF THE GOVERNOR</u>	
<u>IDAHO COMMISSION ON AGING</u>	
15.01.20 - Rules Governing Area Agency On Aging (AAA) Operations	
Docket No. 15-0120-0301 Notice of Rulemaking - Temporary and Proposed Rule	167
<u>IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED</u>	
15.02.30 - Business Enterprise Program	
Docket No. 15-0230-0302 Notice Of Rulemaking - Proposed Rulemaking	175
<u>DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION</u>	
15.04.01 - Rules Of The Division Of Human Resources And Personnel Commission	
Docket No. 15-0401-0301 Notice of Rulemaking - Proposed Rule	177
<u>IDAHO STATE LIQUOR DISPENSARY</u>	
15.10.01 - Rules Of The Idaho State Liquor Dispensary	
Docket No. 15-1001-0301 Notice of Rulemaking - Proposed Rule	223
<u>IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE</u>	
16.03.01 - Rules Governing Eligibility For Medicaid For Families And Children	
Docket No. 16-0301-0302 Notice of Rulemaking - Temporary and Proposed Rule	226
16.03.04 - Rules Governing The Food Stamp Program In Idaho	
Docket No. 16-0304-0301 Notice of Rulemaking - Temporary and Proposed Rule	230
16.03.05 - Rules Governing Eligibility For Aid To The Aged, Blind And Disabled	
Docket No. 16-0305-0302 Notice of Rulemaking - Temporary and Proposed Rule	243

16.03.08 - Rules Governing Temporary Assistance For Families In Idaho (TAFI)	
Docket No. 16-0308-0302	
Notice of Rulemaking - Temporary and Proposed Rule	251
16.03.09 - Rules Governing The Medical Assistance Program	
Docket No. 16-0309-0308	
Notice of Rulemaking - Temporary and Proposed Rule	253
Docket No. 16-0309-0309	
Notice of Rulemaking - Proposed Rule.....	260
Docket No. 16-0309-0310	
Notice of Rulemaking - Temporary and Proposed Rule	275
16.03.10 - Rules Governing Medicaid Provider Reimbursement In Idaho	
Docket No. 16-0310-0303	
Notice of Rulemaking - Proposed Rulemaking.....	287
16.03.17 - Service Coordination	
Docket No. 16-0317-0301 (New Chapter)	
Notice of Rulemaking - Proposed Rulemaking.....	293
16.03.22 - Rules For Licensed Residential And Assisted Living Facilities	
Docket No. 16-0322-0301	
Notice of Rulemaking - Proposed Rule.....	306
16.05.01 - Rules Governing The Protection And Disclosure Of Department Records	
Docket No. 16-0501-0301 - (Chapter Repeal)	
Notice of Rulemaking - Proposed Rule.....	308
16.05.01 - Use And Disclosure Of Department Records	
Docket No. 16-0501-0302 - (Chapter Rewrite)	
Notice of Rulemaking - Proposed Rule.....	309
16.06.12 - Rules Governing The Idaho Child Care Program	
Docket No. 16-0612-0301	
Notice of Rulemaking - Proposed Rule.....	324
16.06.13 - Rules Governing Emergency Assistance For Families And Children	
Docket No. 16-0613-0301	
Notice of Rulemaking - Pending Rule.....	328
Docket No. 16-0613-0302	
Notice of Rulemaking - Pending Rule.....	329
SUBJECTS AFFECTED INDEX	330
CUMULATIVE RULEMAKING INDEX	343
SUBJECT INDEX	344

Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Rulemaking Notice published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletins are cited by year and volume number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, 03-1 refers to the first Bulletin issued in calendar year 2003. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No.02-1 refers to January 2002; Volume No. 02-2 refers to February 2002; and so forth. Example: The Bulletin published in January of 2003 is cited as Volume 03-1, the December 2002 Bulletin is cited as Volume 02-12, etc.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been adopted and approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are not printed in the Administrative Code and are published only in the Bulletin.

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rulemaking**, printed in each Bulletin.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings include all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the

content of the rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a Notice of Intent to Promulgate a Rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. Combining the rulemaking allows for a single publication of the text.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, BYU Idaho Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and *Individual Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820 or FAX (208) 332-1896.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-0301"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"0301" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2003.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2003

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	January 1, 2003	February 5, 2003	February 26, 2003
03-3	March, 2003	February 5, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	March 5, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	April 2, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 30, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	June 4, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	July 2, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 30, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	October 1, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 29, 2003	December 3, 2003	December 24, 2003

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	*November 19, 2003	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2004	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 4, 2004	April 25, 2004
04-5	May, 2004	March 31, 2004	May 5, 2004	May 26, 2004
04-6	June, 2004	May 5, 2004	June 2, 2004	June 22, 2004
04-7	July, 2004	June 2, 2004	July 7, 2004	July 28, 2004
04-8	August, 2004	June 30, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 28, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	**August 25, 2004	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 2004	December 1, 2004	December 22, 2004

****Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 01	ACCOUNTANCY , Board of	VOLUME 1
IDAPA 38	ADMINISTRATION , Department of	VOLUME 8
IDAPA 44	ADMINISTRATIVE RULES COORDINATOR , Office of the	VOLUME 8
IDAPA 02	AGRICULTURE , Idaho Department of	VOLUME 1
IDAPA 40	ARTS , Idaho Commission on the	VOLUME 8
IDAPA 03	ATHLETIC COMMISSION	VOLUME 1
IDAPA 04	ATTORNEY GENERAL , Office of the	VOLUME 1
IDAPA 53	BARLEY COMMISSION , Idaho	VOLUME 9
IDAPA 51	BEEF COUNCIL , Idaho	VOLUME 9
IDAPA 07	BUILDING SAFETY , Division of Electrical Board Plumbing Board Building Code Advisory Board Public Works Contractors License Board	VOLUME 1
IDAPA 43	CANOLA AND RAPESEED COMMISSION , Idaho	VOLUME 8
IDAPA 48	COMMERCE , Idaho Department of	VOLUME 8
IDAPA 06	CORRECTION , Board of	VOLUME 1
IDAPA 19	DENTISTRY , Board of	VOLUME 6
IDAPA 08	EDUCATION , Board of	VOLUME 2
IDAPA 10	ENGINEERS AND LAND SURVEYORS , Board of Professional	VOLUME 2
IDAPA 58	ENVIRONMENTAL QUALITY , Department of	VOLUME 9
IDAPA 12	FINANCE , Department of	VOLUME 2
IDAPA 13	FISH AND GAME , Department of	VOLUME 2
IDAPA 14	GEOLOGISTS , Board of Registration of Professional	VOLUME 2
IDAPA 15	GOVERNOR , Office of the Idaho Commission on Aging Idaho Commission for the Blind Idaho Forest Products Commission Division of Human Resources and Personnel Commission Idaho Liquor Dispensary Emergency Response Commission	VOLUME 3

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 16	HEALTH AND WELFARE , Department of	VOLUMES 3, 4, & 5
IDAPA 45	HUMAN RIGHTS COMMISSION	VOLUME 8
IDAPA 30	IDAHO STATE LIBRARY	VOLUME 7
IDAPA 11	IDAHO STATE POLICE	VOLUME 2
IDAPA 17	INDUSTRIAL COMMISSION	VOLUME 5
IDAPA 18	INSURANCE , Department of	VOLUME 5
IDAPA 05	JUVENILE CORRECTIONS , Department of	VOLUME 1
IDAPA 09	LABOR , Idaho Department of	VOLUME 2
IDAPA 20	LANDS , Department of	VOLUME 6
IDAPA 52	LOTTERY COMMISSION , Idaho State	VOLUME 9
IDAPA 22	MEDICINE , Board of	VOLUME 6
IDAPA 23	NURSING , Board of	VOLUME 6
IDAPA 24	OCCUPATIONAL LICENSES , Board of Board of Architectural Examiners Board of Barber Examiners Board of Chiropractic Physicians Board of Cosmetology Board of Environmental Health Specialist Examiners Board of Hearing Aid Dealers and Fitters Board of Landscape Architects Board of Morticians Board of Examiners of Nursing Home Administrators Board of Optometry Board of Podiatry Board of Psychologist Examiners Board of Social Work Examiners Idaho Counselor Board Board of Dentistry Board of Acupuncture Real Estate Appraiser Board Board of Residential Care Facility Administrators	VOLUME 6
IDAPA 25	OUTFITTERS AND GUIDES LICENSING BOARD	VOLUME 6
IDAPA 50	PARDONS AND PAROLE , Commission for	VOLUME 9
IDAPA 26	PARKS AND RECREATION , Department of	VOLUME 6
IDAPA 59	PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO - PERSI	VOLUME 9
IDAPA 27	PHARMACY , Board of	VOLUME 6

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 29	POTATO COMMISSION, Idaho	VOLUME 7
IDAPA 31	PUBLIC UTILITIES COMMISSION	VOLUME 7
IDAPA 41	PUBLIC HEALTH DISTRICTS	VOLUME 8
IDAPA 33	REAL ESTATE COMMISSION	VOLUME 7
IDAPA 56	RANGELAND RESOURCES COMMISSION, Idaho	VOLUME 9
IDAPA 34	SECRETARY OF STATE, Office of the	VOLUME 7
IDAPA 49	SHORTHAND REPORTERS, Board of Certified	VOLUME 8
IDAPA 36	TAX APPEALS, Idaho Board of	VOLUME 7
IDAPA 35	TAX COMMISSION, State	VOLUME 7
IDAPA 39	TRANSPORTATION, Department of	VOLUME 8
IDAPA 54	TREASURER, Office of the State	VOLUME 9
IDAPA 21	VETERANS SERVICES, Division of	
IDAPA 46	VETERINARY MEDICAL EXAMINERS, Board of	VOLUME 8
IDAPA 55	VOCATIONAL AND TECHNICAL EDUCATION, Division of	VOLUME 9
IDAPA 47	VOCATIONAL REHABILITATION, Division of	VOLUME 8
IDAPA 37	WATER RESOURCES, Department of	VOLUME 8
IDAPA 42	WHEAT COMMISSION, Idaho	VOLUME 8

THE OFFICE OF THE GOVERNOR

***EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE***

EXECUTIVE ORDER NO. 2003-07

ESTABLISHMENT OF THE STATEWIDE INTEROPERABILITY EXECUTIVE COUNCIL

WHEREAS, the public safety of all Idahoans is of paramount importance; and

WHEREAS, public safety communications provides a critical role protecting the lives and property of the citizens of Idaho; and

WHEREAS, the State's public safety communications infrastructure is rapidly becoming outdated; and

WHEREAS, the Federal Communications Commission is adopting changes that will affect the ability of public safety communications systems to interoperate with one another, due to new technology and shifts in standards; and

WHEREAS, the effectiveness of public safety communications between jurisdictions to cooperate and coordinate voice and data information is critical to the mission of public safety; and

WHEREAS, state agencies along with federal, local, tribal, and private entities with similar communications requirements should work cooperatively and identify approaches to promote and enhance statewide interoperability; and

WHEREAS, the Idaho Legislature annually appropriates a significant amount of state funds for agency wireless radio communications which could benefit from coordination; and

WHEREAS, there exists opportunities to assist in the promotion of coordination and cooperation of a statewide interoperability goal, which is an ongoing and long-term effort.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by authority vested in me by the Constitution and laws of the State of Idaho, do hereby order:

1. There is hereby created the Statewide Interoperability Executive Council (SIEC).
2. The purpose of the SIEC shall be to provide policy level direction and promote efficient and effective use of resources for matters related to public safety wireless radio interoperability. To that end it shall;
 - a. Develop a statewide vision for interoperable communications;
 - b. Develop standards for public safety communications;
 - c. Promote cooperation among state, federal, tribal, and local public safety agencies in addressing statewide radio interoperability needs in Idaho;
 - d. Review priorities for statewide radio interoperability needs and assist in the development of projects, plans, policies, standards, priorities and guidelines for radio interoperability;
 - e. Ensure adequate wireless spectrum to accommodate all users;
 - f. Facilitate cooperative and contract arrangements to develop a statewide interoperable radio communications system infrastructure;
 - g. Research best practices of other states; and
 - h. Provide recommendations to the Governor and the Legislature, when appropriate, concerning issues related to statewide interoperable radio communications for public safety in Idaho.
3. The SIEC shall receive administrative staff support from the state agencies represented on the Council.
4. The SIEC will meet no less than four times annually.
5. The SIEC will appoint sub-committees consistent with the needs of the Council to address issues including, but not limited to: technical support and education issues regarding interoperable

communications in Idaho; Federal funding availability; and, outreach and liaison with Federal and other Statewide Interoperable Executive Councils in other states working on interoperable communications solutions.

6. The SIEC shall prepare and present a report to the Information Technology Resource Management Council by December 30 of each year describing the Council's activities and achievements of the previous year.
7. A Chair person and Vice-Chair person shall be selected at that first meeting of the SIEC by the members present during that meeting. The term of office for the Chair and Vice-Chair shall be two years. The Chair and Vice-Chair may succeed themselves if approved by the Council.
8. The SIEC shall be composed of the following member agencies with knowledge of and interest in the field of public safety radio communications technology with minimum representation consisting of:

One (1) representative from the Idaho State Police;
One (1) representative from the Idaho Transportation Department;
One (1) representative from the Idaho Sheriff's Association;
One (1) representative from the Idaho Chiefs of Police Association;
One (1) representative from the Idaho Fire Chiefs Association;
One (1) representative from the Idaho Association of Counties;
One (1) representative of the Association of Idaho Cities;
Two (2) representatives from the Military Division;
One (1) representative from the Idaho Department of Administration;
One (1) representative from Federal Law Enforcement;
One (1) representative from the U.S. Department of the Interior;
One (1) representative from the National Interagency Fire Center;
One (1) representative from the Idaho Department of Correction;
One (1) representative from the Department of Lands;
One (1) representative from the Idaho Department of Fish and Game;
One (1) representative from the Idaho Department of Health and Welfare; and
One (1) representative from Tribal Government.

The SIEC may add additional member agencies as deemed appropriate.

The SIEC's membership shall be selected by the groups they represent and approved by the Governor.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this eleventh day of August in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2003-08

ESTABLISHMENT OF THE IDAHO HOMELAND SECURITY COUNCIL

WHEREAS, the Constitution of the State of Idaho requires that government provide for the public safety and security; and

WHEREAS, enemies of the United States, through acts of terrorism, have already attacked this nation's citizens and critical infrastructure; and

WHEREAS, those enemies have demonstrated a continuing desire to overthrow this nation's government, it's military, and the economic base of this nation and each of its sovereign state.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state hereby establish an Idaho Homeland Security Council for the purpose of conducting planning and information sharing between executive level representatives of private sector critical infrastructure and representatives of state, tribal, local, and special districts of governmental agencies charged with maintaining the public health, safety, and security of the people of the State of Idaho.

It is the policy of the State of Idaho to strategically prepare its citizens and local communities, including private sector entities, within the budgetary and legal constraints imposed by the Legislature, to respond to, and recover from, the debilitating impact of both natural and man-caused disasters including paramilitary acts of terrorism and the potential use of weapons of mass destruction. Principal among those preparedness strategies is the protection of the state's critical infrastructure, upon which society depends to meet the basic essentials required for the preservation of life and economic survival. Critical Infrastructure is defined as "those systems and assets, physical or virtual, so vital to the well-being of the citizens of Idaho, that severely reduced capacity or destruction would have a debilitating impact on public health, safety, security and/or the state and local economy."

It shall be the mission of the Council to share information and planning resources in a protected environment under Section 9-340B, Idaho Code, to improve the capability of the public and private sectors to mitigate, prepare, respond, and recover from major disasters, including acts of terrorism and the use of weapons of mass destruction. The Council will, through the Council Chairman, make recommendations and periodically report its findings to the Governor.

The Council shall establish and maintain, through the Idaho Bureau of Disaster Services, a system for exchanging meaningful threat information to executives of critical infrastructure organizations, first responders, local government, state agencies and those private nonprofit organizations that are critical to the health and well-being of the citizens of the State of Idaho.

The Council shall develop recommendations that outline appropriate measures that could be implemented to assist public and private sector organizations with the protection of the state's critical infrastructure when credible threat information has been gathered from any source, and when there is a likelihood of attack on those assets and systems. Recommendations shall include measures for the operation of critical infrastructure when systems and assets are under duress as a result of threats, actual attacks of terrorism, or when the infrastructure is affected by major emergencies and natural or man-caused disasters.

The Council shall develop recommendations to improve preparedness planning, including economic recovery initiatives that are mutually inclusive and compatible with local, tribal, state, and federal response and recovery plans.

The Council shall be comprised of representatives of the following agencies and organizations:

Chairperson. In accordance with Section 46-1006, Idaho Code, the Adjutant General of the State of Idaho is the Governor's authorized representative for emergency planning, preparedness, response, and recovery from all hazards including paramilitary acts, such as terrorism and the use of weapons of mass destruction. The Adjutant General is hereby appointed as chair of the Idaho Homeland Security Council.

The Adjutant General shall recommend to the Governor the names of private and public sector executives to be appointed to the Idaho Homeland Security Council. Council members will be appointed by the Governor. Each appointed Council member shall chair a committee that will further reach out to those local, tribal, state and federal agencies and private organizations that are necessary to adequately plan and prepare for a successful response and recovery from acts of terrorism. The Adjutant General, acting on behalf of the Governor, may appoint private and public sector personnel to committees of the Council. All state agencies may be called upon by the Adjutant General to assist in planning and preparing for terrorism and the potential use of weapons of mass destruction.

Consolidation of State Terrorism Planning Activities:

To ensure that all state agency terrorism-preparedness objectives are compatible, directors of state agencies and heads of self-governing state agencies will submit agency terrorism preparedness plans to the Adjutant General through the Bureau of Disaster Services.

The Lieutenant Governor's Bioterrorism Planning Committee is, effective immediately, reformed under the Health Care and Medical Services Committee of the Idaho Homeland Security Council, chaired by the Director, Idaho Department of Health and Welfare.

Council and committee members will serve without remuneration or reimbursement for expenses, including related travel and per diem to attend council and committee meetings and other related Council functions.

Nothing in this Executive Order changes practices established by existing laws or previously established Executive Orders concerning preparedness for natural or man-caused disasters. Rather, this Executive Order establishes a central body for the review of terrorism plans and a preparedness activity at the state level that provides an avenue for private sector input and information sharing for the purpose of improving the survivability and operation of critical infrastructure in a terrorist environment.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this eleventh day of August in the year of our Lord two thousand and three and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.

*DIRK KEMPTHORNE
GOVERNOR*

*BEN YSURSA
SECRETARY OF STATE*

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.04 - PHYTOSANITARY AND POST-ENTRY CERTIFICATION RULES
DOCKET NO. 02-0604-0301 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

LEGAL 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, 22-107 and 22-2006, 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 15, 2003.

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 export certification program budget has gone into a deficit in the past year requiring the shifting of personnel to other programs to allow the budget to recover. No serious overhaul of the fee structure has been undertaken in the past ten years. The fee structure in IDAPA 02.06.04.500 and IDAPA 02.06.06.550 will be revised to reflect the proposed fee increases. The proposed fees are in line with those of surrounding states and less than those charged by the USDA for similar services.

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

As authorized by Sections 22-107 and 22-2006, Idaho Code, the following fees will be changed:

SERVICE	EXISTING UNIT COST	PROPOSED UNIT COST
USDA (Federal) Phytosanitary Certificate	\$10.00	\$40.00
ISDA (State) Phytosanitary Certificate	\$10.00	\$25.00
Area Inspection Per Cwt.	\$0.075	\$0.14
USDA (Federal) Phytosanitary Certificate Sample	\$12.00	\$0.00
Officially Drawn Sample	\$12.00	\$20.00
Submitted Sample	\$10.00	\$20.00
Application for Field Inspection	\$3.00	\$5.00
Acreage Inspection, Minimum Fee	\$35.00	\$50.00
Bean Seed from East of the U.S. Continental Divide or a Foreign Country:		
Active Growth Inspection Per Acre, Per Inspection	\$7.50	\$10.00
Windrow Inspection Per Acre, Per Inspection	\$7.50	\$10.00
Tags, Green or Yellow, In-State Planting, Per Cwt.	\$0.12	\$0.18
Treatment Observation, Fumigation, Per Hour	\$25.00	\$30.00
Special Projects Not Covered by Existing Fee Structure: Research Fee, Lot History Verification, Data Entry, Sales and Purchases of Inventory, Transfer Lots into ISDA Database, ISDA Training of Private Company Personnel. This is a Per Hour Charge.	\$0.00	\$25.00

NEGOTIATED RULEMAKING: The proposed changes were presented to the Seed Industry at meetings in December of 2002 and February of 2003. Only one written comment was received and that request will be accommodated. The request expressed the desire for the cost for state phytosanitary certificates be kept to a minimum and separate from federal phytosanitary certificates.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Garry West, Program Manager at (208) 736-2195 or Michael Cooper, Acting Administrator at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August, 2003.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0604-0301

500. FEES AND CHARGES.

01. Phytosanitary Certificates. ()

a. All Federal Phytosanitary Inspection Certificates or like documents: ~~ten~~ forty dollars (\$~~140~~) per certificate. (2-1-95)()

b. State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. ()

02. Phytosanitary Certification And Like Inspections And Official Treatment Observations. (2-1-95)

a. Officially Drawn Samples: (i.e., ~~phytosanitary certificates~~, purity and germ samples, referee samples, lab analysis) - ~~twelve~~ twenty dollars (\$~~120~~) per sample. (2-1-95)()

b. Submitted Samples: ~~ten~~ twenty dollars (\$~~20~~) per item submitted. (2-1-95)()

c. Treatment Observations: for official verification of seed treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into ~~to~~ the state in violation of a state quarantine, fees shall be ~~twenty-five~~ thirty dollars (\$~~25~~30) per hour (including travel time), and any per diem incurred. Per diem shall be at established state rates. (2-1-95)()

d. Rush service fees shall be one hundred dollars (\$100) per certification which will be in addition to

the normal phytosanitary certification charges outlined in this section. (2-1-95)

e. Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays shall be subject to overtime and state per diem charges in addition to the normal charges outlined in this section. (2-1-95)

03. Area Inspections. Area Inspection: ~~seven and one-half~~ fourteen cents (\$.07514) per hundred-weight. (~~2-1-95~~)()

04. Field Or Lot Inspections. (2-1-95)

a. Application For Field Inspection: ~~three~~ five dollars (\$35) per application. (~~2-1-95~~)()

b. Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of ~~thirty-five~~ fifty dollars (\$350) per inspection will be charged when the total acreage submitted by any one (1) applicant is ~~ten~~ fifteen (105) acres or less. (~~2-1-95~~)()

05. Post-Entry Quarantine Inspections. The inspection fee shall be two-hundred dollars (\$200) for the required two (2) year quarantine. An additional one-hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two-hundred dollar (\$200) inspection fee is non-refundable, and shall be retained to cover administrative costs. (2-1-95)

06. Plant Pathological Laboratory Services. Fees available upon request. (2-1-95)

07. Special Project Fee. Special projects not covered by existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects, include but are not limited to, research, lot history verification, data entry, sales and purchases, transfer of lots into ISDA database, ISDA training of private company personnel or any other circumstance approved by the Director. ()

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS (*PHASEOLUS SPP.*) IN IDAHO

DOCKET NO. 02-0606-0301 (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, 22-107 and 22-2006, 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 15, 2003.

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 export certification program budget has gone into a deficit in the past year requiring the shifting of personnel to other programs to allow the budget to recover. No serious overhaul of the fee structure has been undertaken in the past ten years. The fee structure in IDAPA 02.06.04.500 and IDAPA 02.06.06.550 will be revised to reflect the proposed fee increases. The proposed fees are in line with those of surrounding states and less than those charged by the USDA for similar services.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: As authorized by Sections 22-107 and 22-2006, Idaho Code, the following fees will be changed:

SERVICE	EXISTING UNIT COST	PROPOSED UNIT COST
USDA (Federal) Phytosanitary Certificate	\$10.00	\$40.00
ISDA (State) Phytosanitary Certificate	\$10.00	\$25.00
Area Inspection Per Cwt.	\$0.075	\$0.14
USDA (Federal) Phytosanitary Certificate Sample	\$12.00	\$0.00
Officially Drawn Sample	\$12.00	\$20.00
Submitted Sample	\$10.00	\$20.00
Application for Field Inspection	\$3.00	\$5.00
Acreage Inspection, Minimum Fee	\$35.00	\$50.00
Bean Seed from East of the U.S. Continental Divide or a Foreign Country:		
Active Growth Inspection Per Acre, Per Inspection	\$7.50	\$10.00
Windrow Inspection Per Acre, Per Inspection	\$7.50	\$10.00
Tags, Green or Yellow, In-State Planting, Per Cwt.	\$0.12	\$0.18
Treatment Observation, Fumigation, Per Hour	\$25.00	\$30.00
Special Projects Not Covered by Existing Fee Structure: Research Fee, Lot History Verification, Data Entry, Sales and Purchases of Inventory, Transfer Lots into ISDA Database, ISDA Training of Private Company Personnel. This is a Per Hour Charge	\$0.00	\$25.00

NEGOTIATED RULEMAKING: The proposed changes were presented to the Seed Industry at meetings in December of 2002 and February of 2003. Only one written comment was received and that request will be accommodated. The request expressed the desire for the cost for state phytosanitary certificates be kept to a minimum and separate from federal phytosanitary certificates.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Garry West, Program Manager at (208) 736-2195 or Michael Cooper, Acting Administrator at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August, 2003.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0606-0301

550. FEES AND CHARGES.

The fees and charges for tags and inspections under these rules are: (4-2-03)

01. Tags. Green tags or Yellow tags for In-State Planting Purposes - ~~Twelve~~ Eighteen cents (\$0.128) per hundred-weight. (~~4-2-03~~)()

02. Applications. (4-2-03)

a. Application for Field Inspection - ~~Three~~ Five dollars (\$~~3~~5) each. (~~4-2-03~~)()

b. Late Application for Field Inspection – Ten dollars (\$10) each. (4-2-03)

03. Field Inspections. (4-2-03)

a. Active Growth Inspection Fees. (4-2-03)

i. Seed from west of the United States Continental Divide - Three dollars and fifty cents (\$3.50) per acre, per inspection. (4-2-03)

ii. Seed from east of the United States Continental Divide or a foreign country - ~~Seven~~ Ten dollars ~~and fifty cents~~ (\$~~7.50~~ \$10) per acre, per inspection. (~~4-2-03~~)()

b. Windrow Inspection Fees - Seed from west of the United States Continental Divide.(~~4-2-03~~)()

- i. Done by the Department - Three dollars and fifty cents (\$3.50) per acre. (4-2-03)
- ii. Seed company supplies one (1) employee and transportation - Two dollars (\$2.00) per acre. (4-2-03)
- iii. Seed company supplies two (2) employees and transportation - One dollar and fifty cents (\$1.50) per acre. (4-2-03)
- iv. Seed company supplies three (3) employees and transportation - One dollar (\$1.00) per acre. (4-2-03)
- v. Seed company supplies four (4) or more employees and transportation - No charge. (4-2-03)
- vi. Requests for windrow inspections after office hours, on weekends or holidays will be charged at cost plus mileage. (4-2-03)

c. Windrow Inspection Fees - Seed from east of the United States Continental Divide or a foreign country - Ten dollars (\$10) per acre. ()

04. Laboratory Seed Sampling. Official Sample - ~~Twelve~~ twenty dollars (~~\$120~~) per sample. Sample size requirements for imported seed: (~~4-2-03~~)

Lot size	Sample Size
<10 pounds	Negotiable
10 – 14 pounds	0.5 pounds
15 – 25 pounds	1.0 pounds
26 – 50 pounds	1.5 pounds
51 – 200 pounds	2.0 pounds
201 – 1,000 pounds	3.0 pounds
>1,00 <u>0</u> pounds	5.0 pounds for every 10,000 pounds or portion thereof

(~~4-2-03~~)()

05. Plant Pathological Laboratory Services. Fees will be charged at current laboratory rates and are available upon request. (4-2-03)

06. Confirmation Fees. ~~Confirmation of the identity of the causal organism by the University of Idaho plant pathologists.~~ The party disputing the Department's determination of the presence of a regulated pest per Subsection 350.03 will be responsible for the payment of fees charged by the University of Idaho. (~~4-2-03~~)()

07. Special Project Fee. Special projects not covered by existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects, include but are not limited to, research, lot history verification, data entry, sales and purchases, transfer of lots into ISDA database, ISDA training of private company personnel or any other circumstance approved by the Director. ()

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.25 - SMALL LEGUME SEEDS

DOCKET NO. 02-0625-0301

NOTICE OF RULEMAKING - PROPOSED RULE

(REPEAL OF CHAPTER)

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 Section 69-231, 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 15, 2003.

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 purpose of this rule is to repeal IDAPA 02.06.25, "Small Legume Seeds". "Small legume seeds" were removed from the definition of Agricultural Commodities in Title 69, Chapter 2, Idaho Code, effective July 2002, as a result of Title 22, Chapter 51 Idaho Code, Seed Indemnity Fund Law becoming effective.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:
There are no fees imposed by this rule.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because seeds were removed from the definition of Agricultural Commodities in Title 69, Chapter 2, Idaho Code on July 1, 2002.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Russell Dapsauski, Program Manager at 332-8612.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
Boise, ID 83701
(208) 332-8500
(208) 334-2170 Fax

IDAPA 02.06.25 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.03 - RULES GOVERNING MODULAR BUILDINGS

DOCKET NO. 07-0303-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 7, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-4107, 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 15, 2003.

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 temporary and proposed rule change is housekeeping in nature and eliminates reference to provisions for replacing lost insignia for modular buildings, which historically never occurs. This rule change also deletes fees for out of state inspection charges as the Building Bureau no longer performs out of state inspections. Lastly, the change deletes references to plumbing and electrical fees, which are charged by the Plumbing and Electrical Bureaus.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as the change confers a benefit to the public by eliminating unnecessary fees.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the temporary and proposed rule changes are housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, Division of Building Safety, (208) 332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
(208) 334-3951 / (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0303-0301

017. INSIGNIA.

01. Required Insignia. Each modular building section substantially prefabricated and assembled shall bear a division insignia prior to leaving the manufacturing facility. Assigned insignia are not transferable and are void when not affixed as assigned. All such voided insignia shall be returned to, or may be confiscated by the division. Insignia remain the property of the division and may be reappropriated by the division in the event of violation of conditions of approval. Assigned insignia affixed in the field shall be under the direction of the division's authorized agent. (5-3-03)

a. Single units shall have the insignia permanently attached below the electrical service entrance. (6-12-79)

b. Multiple section units shall have the insignia permanently attached on all perimeter sections to the outside wall next to the major access opening. For interior units and second story units the insignia shall be permanently attached on the interior wall next to the major access opening. (6-12-79)

c. Each section of a multiple modular building shall have the same identifying serial number followed by a numerical sequence identifier and letter suffix. (5-3-03)

02. Application For Insignia. The manufacturer shall make application for an insignia for each unit to be manufactured as required by IDAPA 07.03.03.017.01. The permit/insignia application shall be submitted to the division in accordance with IDAPA 07.03.06 and shall include the appropriate fees. Applications shall include the serial number of each unit for which an insignia is requested. (5-3-03)

03. Alteration Or Conversion. (6-12-79)

a. Factory alterations or conversions of an approved modular building prior to first occupancy shall NOT take place until a permit under the provisions of IDAPA 07.03.06 has been obtained. (5-3-03)

b. Non-factory alterations or conversions. The jurisdiction for non-factory produced additions, repairs or alterations to modular buildings and commercial coaches built in conformance with and as prescribed in the Idaho Building Code Act, Section 39-4109, Idaho Code, once such unit has left the manufacturing facility and/or a dealer's lot, and bears an appropriate insignia of compliance, rests with the local unit of government having the jurisdiction for the administration and enforcement of locally adopted codes prescribed within the Idaho Building Code Act. (5-3-03)

04. Denial Of Insignia. Should inspection reveal that a manufacturer is not manufacturing units according to the codes specified in Title 39, Chapter 41, Idaho Code, and these rules, and such manufacturer after having been served with a notice setting forth in what respect the provisions of the codes or rules have been violated continues to manufacture units in violation of the codes or rules, applications for new insignia shall be denied and insignia issued for units in noncompliance such manufacturer may resubmit an application for insignia. (5-3-03)

05. Removal Of Insignia. (6-12-79)

a. In the event any unit bearing an insignia is found to be in violation of the codes enumerated in Title 39, Chapter 41, Idaho Code, or these rules, the division may remove the insignia and shall furnish the owner or his agent with a written statement of violations. (5-3-03)

b. The owner or his agent shall request an inspection after making corrections to bring the unit into compliance before the division shall issue a replacement insignia. (5-3-03)

~~**06. Lost Insignia.** (6-12-79)~~

~~**a.** When an insignia of approval becomes lost or damaged, the division shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the unit serial number, and when possible the insignia number. (5-3-03)~~

~~**b.** All damaged insignia shall be promptly returned. Damaged or lost insignia shall, upon payment of the replacement insignia fee as provided in the fee schedule, be replaced by the division with a replacement insignia, which shall bear the date of issue of the original insignia, and which shall be designated as a replacement insignia, provided the unit still meets the standards prescribed by these rules. (5-3-03)~~

018. FEE SCHEDULE.

01. Modular Building Fees. Other than as herein specified in this section, the fee schedule for modular buildings shall be as provided by IDAPA 07.03.06, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. (5-3-03)

~~**02. Plumbing And Electrical Fees.** In addition to the fees prescribed in IDAPA 07.03.03.019.01, plumbing and electrical inspection fees in accordance to those prescribed in the Plumbing Laws and Regulations and the Electrical Laws and Regulations shall apply, and shall be paid to the division. (5-3-03)~~

~~**03. Requested Inspection, Out Of State And Field Technical Service Fees.** Fee equal to total travel cost based on published air fare, or equivalent rate, between Boise, Idaho, and the location of the factory or site plus necessary supplemental surface transportation, and reimbursement for the actual cost of food and lodging plus the fees prescribed in this section. (1-13-81)~~

~~**04. Insignia Replacement Fee.** Ten dollars (\$10). (1-13-81)~~

052. Plan Review Fee. For all systems, the plan approval fees shall be charged as specified in IDAPA 07.03.01.015.03, thirty-six dollars (\$36) per hour. (1-13-81)

063. Insignia Tag Fee. In instances where building permit fees are not charged for modular buildings, a twenty-five dollar (\$25) fee will be charged for an insignia. (5-3-03)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.08 - RULES GOVERNING COMMERCIAL COACHES

DOCKET NO. 07-0308-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 7, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-4107, 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 15, 2003.

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 temporary and proposed rule change is housekeeping in nature and eliminates reference to provisions for replacing lost insignia for commercial coaches, which historically never occurs. Prior rulemaking eliminated the insignia replacement fee altogether, but missed this reference.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as the change confers a benefit to the public by eliminating unnecessary fees.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the temporary and proposed rule changes are housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, Division of Building Safety, (208) 332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
(208) 334-3951 / (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0308-0301

017. INSIGNIA.

01. Required Insignia. All commercial coaches offered for rent, lease or sale in the state of Idaho, shall bear division insignia of compliance prior to leaving the manufacturing plant. (5-3-03)

02. Assignment Of Insignia. Each insignia shall be assigned and affixed to a specific unit. Assigned insignia are not transferable and are void when not affixed as assigned. All assigned insignia not affixed to the specific unit shall be returned to, or may be confiscated by, the division. The insignia shall remain the property of the division, and may be reappropriated by the division in the event of violation of the conditions of approval. (5-3-03)

03. Application For Insignia. Following receipt of plan approval, the unit manufacturer shall make application for an insignia for each unit offered for rent, lease or sale in the state of Idaho. The permit/insignia application shall be submitted to the division, accompanied by the appropriate insignia fees pursuant to IDAPA 07.03.08.019. The application shall include the plan approval number, model designation and the serial number of each unit for which an insignia is requested. Multiple units shall be designated where applicable. An insignia is required for each section of the multiple units. (5-3-03)

04. Denial Of Insignia. Should inspection reveal that the manufacturer is not manufacturing units according to plans approved by the division and such manufacturer, after having been served with written notice setting forth in concise terms the violation, continues to manufacture units without correcting any such violations, applications for new insignia shall be denied and the insignia previously issued shall be subject to confiscation. Upon satisfactory proof of compliance, such manufacturer may resubmit an application for insignia. (5-3-03)

05. Removal Of Insignia. In the event that any unit bearing an insignia is found to be in violation of these rules and regulations, the division shall remove the insignia after furnishing the manufacturer, renter, lessor owner, or agent thereof, with a written statement of such violation. The division shall not issue a new insignia until corrections have been made and the manufacturer, owner, renter, lessor, or agent thereof has requested an inspection pursuant to IDAPA 07.03.08.015. (5-3-03)

~~**06. Lost Insignia.** When an insignia of compliance becomes lost or damaged by the owner of a unit, the division shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the unit's serial number, and when possible, the insignia number. All damaged insignia shall be promptly returned. Damaged or lost insignia shall be replaced by the division with a replacement insignia which shall bear the date of the original insignia, and which shall be designated as a replacement insignia upon payment of the replacement insignia fee as provided in IDAPA 07.03.08.019. (5-3-03)~~

076. Serial Number. Each commercial coach rented, leased or sold, or offered for rent, lease or sale in Idaho, shall bear a legible identifying serial number in accordance with the provisions of this section, which shall include the state of manufacture. (12-5-75)

087. Stamp Of Serial Number And State Of Manufacture. The unit serial number and the state of manufacture shall be stamped into the foremost crossmember of all commercial coaches. Letters and numbers shall be three-eighths (3/8) inch minimum height. Numbers shall not be stamped into a hitch assembly or draw bar. The insignia shall be made of etched brass, stainless steel, anodized or alclad aluminum, or other approved material, not less than two hundredths (0.02) inches thick, and three (3) inches by one and three-fourths (1 3/4) inches minimum size, with lettering not less than one-eighth (1/8) inch high. (3-1-79)

~~**098. Multiple Commercial Coaches.** Each section of multiple commercial coaches shall have the same identifying serial number followed by a numerical sequence identifier and letter suffix. (5-3-03)~~

~~**109. Data On Insignia.** The date of manufacture, showing month, week and year will be shown on the insignia. Such data will be provided by the manufacturer on the application for insignia. (12-5-75)~~

~~**110. Insignia Location.** All insignias shall be located not less than six (6) inches above the floor line. Single units shall have the insignia permanently attached on the exterior wall adjacent to the main door. Multiple section units shall have the insignia permanently attached on all perimeter sections to the outside wall next to the major access opening. For interior units the insignia shall be permanently attached on the interior wall next to the major access opening. (12-5-75)~~

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.12 - RULES GOVERNING MANUFACTURED OR MOBILE HOME INSTALLATIONS

DOCKET NO. 07-0312-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 44-2201, 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 15, 2003.

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 temporary and proposed rule change replaces the adopted January 1, 2003 edition of the "Idaho Manufactured Home Installation Standard" (Standard) with the January 1, 2004 edition. The January 1, 2004 revised standard incorporates important new provisions to require derating of gas and oil appliances to prevent unsafe combustion and carbon monoxide poisoning. Various minor changes have been made within the Standard.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a) and (c), Idaho Code, the Governor has found this temporary adoption of the rule is appropriate as the change is necessary to protect the public safety and confers a benefit to the industry.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the temporary and proposed rule changes are housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0312-0301

004. ADOPTION AND INCORPORATION BY REFERENCE.

The Idaho Manufactured Home Installation Standard (January 1, 2003~~4~~ edition) is hereby adopted and incorporated by reference into IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," Division of Building Safety. A current copy is available for review or copying at the office of the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642. ~~(5-3-03)(1-1-04)T~~

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 54-1904, 54-1907 and 54-1910 through 54-1912, 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 15, 2003.

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 proposed rule changes are necessary to implement the legislation adopted by the 1999 and 2001 Legislatures. The changes update office information, clarify the application and hearing processes, add definition of terms, and delete references to language that already appear in statute. Also adds required sections to beginning of rule.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0301

000. LEGAL AUTHORITY.

The authority of the Board to adopt rules of practice and procedure is provided in This chapter is adopted pursuant to Section 54-1907, Idaho Code, as amended. (7-1-93)()

001. TITLE.

These rules shall be cited as IDAPA 07.05.01, "Rules of the Public Contractors License Board". ()

002. INTENT.

The Board believes the legislature in providing the License Act and subsequent amendments thereto, intended to afford some protection to officials of units of government at all levels in their dealing with persons, firms or corporations engaging in the construction, reconstruction or repair of Public Works. The licensing of a person, firm or corporation as a "Public Works Contractor" ~~shall give is intended to provide~~ the investing public body some assurance of the contractor's reputation, ability, qualifications, experience and financial responsibility. ~~(7-1-93)~~()

003. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of this chapter. ()

004. ADMINISTRATIVE APPEALS.

The administrative procedures governing this chapter are outlined herein. ()

005. -- 009. (RESERVED).

00310. DEFINITIONS.

As used in these rules. (7-1-93)

01. Administrator. Refers to the administrator of the Division of Building Safety. ()

~~02.~~ **Applicant.** Shall mean any person who has filed an application with the ~~Board~~ administrator. ~~(7-1-93)~~()

~~02.~~ **Licensee.** ~~Shall mean any individual proprietor, copartnership, limited liability partnership, limited liability company, corporation, joint venture or other business organization who holds a current, unrevoked license.~~ ~~(3-19-99)~~

03. Board. Refers to the Public Works Contractors License Board which is created within the Idaho Division of Building Safety as set forth in Title 54, Chapter 19, Idaho Code. ()

04. Compiled. Refers to a type of financial statement in which the information presented is based solely upon representations by an organization's management. ()

05. Financial Statement. A balance sheet and income statement prepared in accordance with generally accepted accounting principles. ()

06. Incidental Work. Shall mean work, the nature of which does not require any additional trade licenses and which may be carried out in conjunction with an activity for which the licensee is licensed, but is not intended to produce an amount of income over ten percent (10%) of the total bid amount. ()

07. Independent Audit Report. A report prepared by an independent certified public accountant presenting such auditor's opinion on the fairness of the organization's financial statements and prepared in accordance with generally accepted auditing standards. ()

08. Licensee. Includes any individual proprietor, partnership, limited liability partnership, limited liability company, corporation, joint venture, or other business organization holding a current, unrevoked public works contractor license. ()

~~039.~~ **Petitioner.** Shall mean: (7-1-93)

a. Any licensee who has filed with the Board a written request for the change or addition to the types of construction for which he is licensed; (7-1-93)

b. Any applicant or licensee requesting a rehearing in any proceeding or appealing from the final

decision or order of the administrator or the board; (7-1-93)()

c. Any interested person requesting the promulgation, amendment or repeal of a rule, or; (7-1-93)

d. Any interested person requesting a declaratory ruling on the applicability of the License Act or of any rule or order of the Board. (7-1-93)

~~04. Staff. Shall mean Executive Director or other members of the staff as appropriate who may appear and participate in any proceedings before the Board. (3-19-99)~~

~~05. Hearing Officer. Shall mean that person designated by the Chairman of the Board to conduct or assist in any proceeding before the Board. (7-1-93)~~

~~06. Legal Counsel. For the Board shall be as designated by the Board. (3-19-99)~~

~~07. Supplier. Persons who only supply goods or equipment to a construction project and do not perform any other construction contracting duties. Suppliers shall be exempt from licensure. (3-19-99)~~

~~08. Executive Director. Shall refer to and shall mean the same as the Registrar. (3-19-99)~~

10. Reviewed. Refers to a financial statement that is accompanied by the opinion of a certified public accountant stating that, based upon representations by the organization's management, the reviewer has a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in accordance with generally accepted accounting principles. ()

~~00411. -- 099. (RESERVED).~~

100. PLACE OF BUSINESS BOARD OFFICE -- LOCATION, HOURS, MAILING ADDRESS, TELEPHONE NUMBER, FACSIMILE NUMBER.

The principal place of business address of the Board shall be office, and its mailing address, is 355 N. Orchard, Suite 107, PO Box 83720, Statehouse Mail, Boise, ID 83720-0073, 1090 E. Watertower Street, Meridian, Idaho 83642. Office hours are from 8 a.m. until 5 p.m., daily. The office is closed on weekends and holidays. The board telephone number is (208) ~~327-7326~~ 334-4057, fax and the facsimile number is (208) 327-7377 855-9666, office hours 8:00 a.m. to 5:00 p.m. (3-19-99)()

101. MEETINGS.

Notice of regular and special meetings. The Executive Director shall give due notice of any regular or special meeting to each member of the Board Meetings of the board are subject to the Idaho Open Meeting Law, Title 67, Chapter 23, Idaho Code. (3-19-99)()

102. COMMUNICATION.

All written communications, forms and documents concerning any matter covered by the Act or these rules shall be addressed to the Executive Director of the Board (administrator and not to members of the Board or staff). All communications are deemed officially received only when delivered to the principal board office of the Board. Documents may be submitted by facsimile but not by other electronic or computerized means. (3-19-99)()

103. PETITIONS.

Petitions may be filed by application. An applicant or licensee seeking an rehearing of the decision and order or decision of the administrator or the Board on any application or other matter, or in any disciplinary proceeding, must file a written petition. (3-19-99)()

104. FORM AND CONTENT OF PETITION.

01. Form. The form petition, including the heading, the name of the petitioner or person making the request, and the purpose of the petition shall be in substantially the manner prescribed in these rules following form: (3-19-99)()

~~02a.~~ Paragraph 1-~~S~~ shall state the petitioner's interest in the matter name, address, and license number.

(3-19-99)()

~~03b.~~ Paragraph 2-~~5~~ shall state the petitioner's request in brief, precise and specific terms, including references to any pertinent statutes or rules, and shall provide a detailed explanation of the purpose for the request.

(3-19-99)()

~~04c.~~ Paragraph 3-~~5~~ shall contain the statements of fact to support the petitioner's request. Briefs and supporting documents may accompany petitions.

(3-19-99)()

~~052.~~ **Dated And Signed.** The petition shall be dated and signed by the petitioner. (3-19-99)

~~063.~~ **Filed.** The petition shall be filed ~~with the Board. The Board shall acknowledge the petition by First Class Mail with the notice of hearing or the decision of the Board in the matter~~ as set forth in Section 102.

(3-19-99)()

~~105. REVIEW.~~

~~Petitions will be reviewed, heard and decided at regular monthly meetings of the Board.~~

(3-19-99)

~~1065. SPECIAL PROVISIONS GOVERNING LICENSE RENEWAL - FILING DEADLINES; PETITIONS FOR EXTENSION OF TIME TO FILE; LAPSED LICENSES.~~

~~01. Filing Deadline.~~ Applications for renewal of a license shall be filed by the last working day of the month in which the license expires. ()

~~012. Filing Deadline Extension Of Time.~~ A ~~written~~ petition for an extension of time in which to renew shall be filed by the last working day of the month in which the license expires. The petition shall ~~state briefly and concisely the reason(s) for the extension of time~~ be accompanied by the required fees. Petitions not accompanied by the required fees or filed after the license has expired will not be honored. ()

i. The petition shall ~~request an extension be granted for a specified~~ specify the number of days for which the extension is being requested. ()

ii. ~~not to~~ Under no circumstances shall an extension exceed sixty (60) days. Petitions for more than sixty (60) days will not be honored. (3-19-99)()

~~02. Accompaniments.~~ ~~The petition shall be accompanied by the proper license fees and filed with the Board not later than the last day of the licensing period. A petition filed without the fees or filed after the license has expired will not be honored.~~ (3-19-99)

~~03. Approval Of Petition.~~ Approval of a petition for an extension of time shall authorize operation as a contractor until actual issuance of such renewal license for the ensuing licensing period, provided the application for renewal is filed with the Board within the extended time specified. (3-19-99)

~~04. Failure To File.~~ ~~Should~~ ~~if~~ the licensee fails to file ~~his~~ a timely application for renewal ~~on or before the last day of the extended time specified in the notice or petition for extension,~~ his the license shall lapse and expire ~~on that~~ the last day of the license period. Licenses not renewed in a timely manner shall be considered delinquent for a period of one (1) year from the last day of the license period and may be renewed at any time during that year. Licenses delinquent for more than a period of one (1) year must be reinstated and the applicant for reinstatement must apply as if for a new license. (3-19-99)()

~~1076. SPECIAL PROVISIONS COVERED IN A PETITION TO CHANGE OR ADD TYPES OF CONSTRUCTION.~~

~~The~~ A petition to change or add types of construction shall be supported by evidence, ~~or~~ satisfactory to the administrator, of work history, job performance, experience, equipment, ~~and~~ financial responsibility, ~~as deemed necessary in the circumstances~~ and a minimum of three (3) letters of reference. The evidence of work history, job performance, experience, and financial responsibility shall comply with the requirements of Subsections 110.01 and 110.02 of these rules. All of the evidence shall specifically pertain to work that is similar in scope and value to that for which the change or addition is being requested. (3-19-99)()

1087. RECORDS.

The Board shall maintain in its offices in Boise, Idaho, an indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations, and suspensions of licenses records are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (3-19-99)()

~~109. COPIES.~~

The Board shall furnish a certified copy of any license issued upon receipt of the sum of fifty cents (\$.50). (3-19-99)

~~110. DIRECTORY LISTS.~~

The Board shall publish a directory of the names and addresses of contractors licensed pursuant to Title 54, Chapter 19, Idaho Code. (3-19-99)

01. Furnish Lists. *The Board may furnish lists to such public works and building departments, public officials or public bodies, architects and professional engineers, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are available. (3-19-99)*

02. Request For Copies. *Copies of the list may be furnished by the Board upon request to any firm or individual upon payment of a reasonable fee fixed by the Board. (3-19-99)*

~~111. POCKET CARDS.~~

The Board may issue pocket cards to licensees that may serve as satisfactory evidence of the possession of a license and current renewal. (3-19-99)

~~112. STATEMENT FOR PUBLIC WORKS PROJECTS.~~

The Board shall promote and encourage the publication of a statement regarding licensing requirements in the advertised specifications for public works projects. (3-19-99)

~~113. POSTED NOTICES.~~

The Board shall promote and encourage the posting of notices regarding licensing requirements in conspicuous places in public offices and buildings. (3-19-99)

~~114. PUBLICATION.~~

The Board shall, upon request and periodically, as needed, publish and distribute statements and placards regarding licensing requirements to public officials, architects, engineers and other interested persons. (3-19-99)

~~115. BID PROPOSALS.~~

The Board shall promote and encourage the use of provisions requiring the posting of license certificate numbers on bid proposal forms for public works projects. (3-19-99)

~~116. NAMING SUBCONTRACTORS.~~

The Board shall promote and encourage the use of provisions requiring the posting of license certificate numbers in those instances where subcontractors and specialty contractors are required to be named in the bid proposal form for public works projects. (3-19-99)

~~11708. REVIEW.~~

The Board may review the basis for a contested case at any regular or special meeting. Any final decision of the administrator or the board may be reviewed in accordance with the provisions of the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (3-19-99)()

~~118. ANSWER.~~

An answer to a citation and complaint shall be filed within ten (10) days after the citation is served. Answers shall be reviewed at regular or special meetings of the Board. (3-19-99)

~~1109. NOTICE OF HEARING.~~

In any contested case where a hearing is set, due notice of the date, time and place shall be served on or other matter of board business, written notification, mailed to the licensee or the applicant or licensee by Certified Mail, and such

~~other interested persons, including complainants, by First Class Mail at the most current address on record with the board, shall constitute sufficient notification for all purposes within Title 54, Chapter 19, Idaho Code, and these rules.~~
(3-19-99)()

1210. APPLICATION FOR LICENSURE - DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.

~~The Board may, at its discretion, require that the financial reports furnished by the applicant be prepared by an accountant. All financial information submitted by an applicant shall be considered confidential and exempt from public inspection.~~
(3-19-99)

01. Application Documentation. To obtain a license, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, a written, notarized application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: ()

a. A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; ()

b. A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; ()

c. A general description of applicant's machinery and equipment; ()

d. An annual financial statement, as herein defined, that was issued no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the board may prescribe by rule and which may include a letter from applicant's bonding company stating the amount of the applicant's bonding capability per project and in the aggregate; ()

e. For class A, AA, and AAA license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For class B license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For class C and D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. ()

f. The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee. ()

02. Application For Change In Licensing Class. Requests for a licensing class higher than that for which the applicant qualifies shall be accompanied by the information in Subsections 110.01.a., 110.01.b., 110.01.d., and 110.01.e., and the applicable fee. Licenses granted under Subsection 110.02 shall be valid for a period of twelve (12) months from the date of issuance. ()

03. Extension Of Time To File Financial Statement. The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application shall be filed prior to the first day of such renewal licensing period. In the event an extension is granted, the renewal license shall be valid for a period of twelve (12) months from the date of the issuance of the renewal license. ()

~~12104.~~ **Appraisals.** The Board administrator may, ~~in its discretion,~~ require the submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. (3-19-99)()

~~12205.~~ **References.** The Board administrator may, ~~in its discretion,~~ require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as ~~the Board may deem~~ necessary and advisable in determining the applicant's qualifications. (3-19-99)()

06. Bonding. Applicants may submit letters from a bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, together with supporting information. ()

12311. ORAL COMPLAINTS.

~~An oral~~ Complaints alleging a violation of the License Act or these rules shall be ~~reduced to~~ in writing; and filed with the administrator as provided in these rules. All complaints must be verified; and filed with submitted on forms provided by the Board in the form and manner provided in these rules. (3-19-99)()

~~124. DETERMINING COVERAGE.~~

~~The Board shall make its own determinations as to whether contractors, builders, subcontractors, specialty contractors, or material men are covered by Title 54, Chapter 14, Idaho Code, even though such determinations may differ from those of the owner, other interested persons or agencies. The Board may make its own determinations as to whether a specific type of work or project shall be regarded as "public works construction" within the meaning of the License Act, even though such determinations may differ from those of the owner, other interested persons or agencies.~~ (3-19-99)

~~12512. -- 199. (RESERVED).~~

200. CLASSES LIMITATIONS.

~~01. Class.~~ "Class" of any license shall be as designated and defined in Section 54-1904, Idaho Code as amended. (7-1-93)

021. Limit Of One License. A licensee will be permitted to hold only one (1) class of license at any given time. (7-1-93)()

~~03. Filing Upgrade Application.~~ A licensee in one class who desires a license of another class shall prepare and file an upgrade application, current financial statement and pay the fee for such other class. (3-19-99)

042. Voiding Old Previous License Null And Void. When a licensee of one class has been issued a license of another class, the previous license shall be null and void. (7-1-93)()

03. Total Bid Cost. The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except class AAA, shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of the subcontractors. Subcontractor bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project. ()

04. Two Or More Licensees. Two (2) or more licensees of the same class or of different classes shall not be permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. ()

05. Type 4 License Holder. The holder of a license for Type 4, Specialty Construction, shall be entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. ()

201. FEES.

01. Fees. Fees for each class of public works contractor and construction manager license shall be as designated and defined in Sections 54-1904, and 54-4510, Idaho Code. (3-19-99)(____)

02. Payment Of Fees. Fees shall be payable to "~~Treasurer, State of Idaho~~ Division of Building Safety - Public Works Contractors". (7-1-93)(____)

03. Application Filed With Fees. Required ~~Fees~~ shall accompany ~~the~~ all applications ~~for a license~~. An application filed without the ~~proper~~ required fees shall be deemed incomplete and returned to the applicant. (3-19-99)(____)

~~**04. Nonrefundable Fees.** Fees accompanying original applications and fees accompanying renewal applications are for the administration and enforcement of the Act and shall not be refunded to the applicant pursuant to Sections 54-1911 and 54-1912, Idaho Code, respectively. (3-19-99)~~

054. Construction Manager Licensing Fees. (3-19-99)

- a. The fee for initial examination and licensing shall be two hundred dollars (\$200). (3-19-99)
- b. The fee for license renewal shall be two hundred dollars (\$200). (3-19-99)
- c. The fee for an inactive license shall be fifty dollars (\$50). (3-19-99)
- d. The fee for license reinstatement shall be two hundred dollars (\$200). (3-19-99)
- e. The fee for administering the examination shall be the standard fee established for taking that examination. (3-19-99)
- f. The fee for issuing and for reinstating a certificate of authority shall be one hundred dollars (\$100). (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

~~**203. RIGHTS GRANTED UNDER LICENSES.**~~

~~**01. Rights.** Rights granted to licensees shall be as designated and defined in Section 54-1904, Idaho Code, and as provided in these rules. (7-1-93)~~

~~**02. Estimated Cost.** The estimated cost and bid limit for each class of license shall be as defined in Section 54-1904, Idaho Code. (7-1-93)~~

~~**03. Total Bid Cost.** The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class AAA, shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of the subcontractors. Subcontractors bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project. (3-19-99)~~

~~**04. Two Or More Licensees.** Two (2) or more licensees of the same class or of different classes shall not be permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. (7-1-93)~~

~~**204. TYPES OF CONSTRUCTION.**~~

~~The types of construction for which licenses are issued shall be as defined and designated in Section 54-1901, Idaho~~

~~Code, and as provided in these rules. (7-1-93)~~

~~**01. Public Works Construction.** A license of any class may be issued for one (1) or more types of public works construction. (7-1-93)~~

~~**02. Type 4.** A license for Type 4, Specialty Construction, shall list one (1) or more specialty categories to which the licensee is restricted. These categories include, but shall not be limited to, the following: Acoustical-Drywall, Air Conditioning & Warm-Air Heating, Blasting, Bridges & Structures, Building Cleaning & Maintenance, Chimney Repair, Clearing, Communications & Alarm Systems, Concrete, Craning & Erection, Crushing, Demolition, Drilling, Electrical (the application must include a State License Number), Elevators/Lifts/Hoists, Excavation & Grading, Fencing, Fire Sprinkler Systems (the application must include a State License Number), Flooring, Floor Coverings/Carpeting, Glass & Glazing, Hauling, Institutional Equipment, Insulation, Landscaping/Seeding/Mulching, Lath & Plaster, Masonry, Guard Rails & Safety Barriers, Millwork & Fixtures, Ornamental Metals, Painting & Decorating, Paving, Pesticide Spraying (the application must include a State License Number), Plumbing (the application must include a State License Number), Refrigeration, Roofing & Siding, Sand Blasting, Sheet Metal, Signing, Sprinklers/Irrigation Systems, Steel Fabrication/Erection/Installation, Tile/Terrazzo, Traffic Marking & Striping, Utilities, Waterproofing/Caulking, Well Drilling (the application must include a State License Number), Boiler, Hot Water Heating & Steam Fitting, Other. (3-19-99)~~

~~**03. Scope And Coverage.** The Board will determine the scope and coverage of each type and category based on what is commonly accepted and practiced by reasonable men engaged in the construction industry. (7-1-93)~~

~~**04. Type 4 License Holder.** The holder of a license for Type 4, Specialty Construction shall be entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. (7-1-93)~~

~~**05. Copies Of State Licenses.** The applicant must submit a copy of any license for any specialty issued by other state agencies. (3-19-99)~~

2053. -- 299. (RESERVED).

~~**300. FILING.** Applicant may file an application form, financial statement and fee with the Board by mail or in person. (7-1-93)~~

~~**301. SCREENING NOTICE.** The Executive Director and staff will receive and screen each application for completeness, clarity, etc. If an application is incomplete, notice of same will be mailed to the applicant by First Class Mail. The notice will specify the incomplete items to be completed. If necessary, the application form will be returned to the sender for completion. (3-19-99)~~

~~**302. (RESERVED).**~~

~~**303. REVIEW BY BOARD.** At a regular meeting on the date scheduled, the application, other information, data, documents and references will be reviewed by the Board. If the application is approved, a License Certificate will be issued effective from the date of approval. (7-1-93)~~

~~**304. DENIED APPLICATIONS.** If, after reviewing the application, other information, data, documents or references, the Board decides: (7-1-93)~~

~~**01. Incomplete Information.** The information before the Board is incomplete, inadequate or in conflict, and further action is required before a decision can be rendered. (7-1-93)~~

~~**02. Denial Of Application.** The information before the Board is such that it would appear proper to deny the application, notice of same will be mailed to the applicant, by certified mail. The notice will state the basis for the action of the Board and may suggest means by which the matter might be remedied, and shall provide the~~

~~applicant an opportunity to answer, to show cause, and shall set a date, time and place for a hearing in the matter.~~
(7-1-93)

305. ~~ANSWER AND APPEARANCE.~~

~~The applicant shall have not less than five (5) nor more than thirty (30) days from the date the notice is served to file a written answer to show cause and to make a written and/or personal appearance before the Board at the scheduled hearing.~~
(7-1-93)

306. ~~HEARING - APPROVAL.~~

~~At a regular meeting on the date set for the hearing, the Board will review the written answer to show cause and any additional information, data, documents or references furnished by the applicant or other interested persons, and the testimony of the applicant or other persons, if a personal appearance is made, and reconsider the application. If the Board approves the application, a License Certificate will be issued effective from the date the application is approved without further hearing on the matter.~~
(7-1-93)

307. ~~HEARING - DENIED APPLICATIONS.~~

~~After reviewing the answer, any additional information, data, documents or references furnished by the applicant or other interested persons, and the testimony of the applicant or other persons, the Board may deny the application, and a decision to that effect will be served on the applicant by Certified Mail.~~
(3-19-99)

308. ~~FAILURE TO ANSWER OR APPEAR.~~

~~If the applicant fails to file a written answer to show cause, or fails to make an appearance either in writing or in person at the scheduled hearing, after due notice of same has been served, the Board may take note of such failure to answer or appear and enter a decision denying the application without further hearing on the matter. The written decision of the Board will be served on the applicant by Certified Mail.~~
(7-1-93)

309. ~~ACCEPTANCE OF DECISION.~~

~~In any notice, hearing or decision, the Board may, in its discretion, deem it proper to deny any application for any class and/or type(s) and approve the application for another class and/or type(s) and serve notice of same on the applicant. If the applicant accepts in writing such other class and/or type(s) the Executive Director shall issue a License Certificate effective on the date applicant's written acceptance is filed with the Board without further hearing or action in the matter by the Board.~~
(3-19-99)

310. ~~PETITION FOR REHEARING.~~

~~A petition for rehearing may be filed by the applicant whose application has been denied within twenty (20) days from the date the decision of the Board denying the application is served on the applicant.~~
(7-1-93)

311. ~~REVIEW OF PETITION.~~

~~A petition for rehearing will be reviewed at a regular meeting of the Board and treated in the manner specified in these rules for petitions.~~
(7-1-93)

312. ~~NOTICE OF REHEARING.~~

~~If a petition for rehearing is approved, the Board shall set a date, time and place for the rehearing, notify the applicant by Certified Mail, and proceed in the manner specified in these rules for hearings.~~
(7-1-93)

313. -- 399. (RESERVED);

400. ~~APPLICATION FOR ORIGINAL LICENSE.~~

~~An application for an Original license, together with the fees, financial statement, references and License Examination therefor, shall be filed with the Board prior to consideration thereof by the Board (Section 54-1911).~~
(7-1-93)

401. ~~APPLICATION FOR ANNUAL RENEWAL.~~

~~An application for annual renewal of a current license together with the fees therefor shall be filed not later than the last day of the license period. Timely filing shall authorize operation as a contractor by the licensee until actual issuance of the renewal license for the ensuing year or until final decision of the Board is rendered in any proceeding. (Section 54-1912, Idaho Code).~~
(7-1-93)

~~402. APPLICATION FOR RENEWAL OF A LAPSED OR EXPIRED LICENSE.~~

~~An application for renewal of a lapsed or expired license, together with the fees therefor, shall be filed with the Board (Section 54-1912). For purposes of these rules, all licenses issued under the Act shall lapse and expire on the last day of the license period, and shall be considered a delinquent renewal for a one (1) year period. (7-1-93)~~

~~403. — 499. (RESERVED).~~

~~500. LICENSE NON TRANSFERABLE.~~

~~The license certificate shall be non-transferable either to another person or to a successor business organization such as a copartnership, corporation, joint venture, or other combination thereof. (Sec. 54-1912, Idaho Code) (7-1-93)~~

~~501300. CHANGED BUSINESS ORGANIZATION - CHANGES IN ORGANIZATION OR STRUCTURE - MEMBERS OF JOINT VENTURES - CHANGES FOR REASONS OTHER THAN DEATH.~~

~~A licensed public works contractor or construction manager who undergoes a change in business organization or structure (such as a change from an individual proprietor to a copartnership, corporation, limited liability partnership, limited liability company, joint venture, or other combination thereof), or where there is a change in ownership, must file an application for a new license on behalf of such successor organization or new owners within sixty (60) days after such change occurs. The Board administrator may authorize the continuous operation of the licensee as a contractor during the interim period until the application of the successor organization is reviewed; provided written notice of such change is filed with the Board within thirty (30) days after such change occurs. A change in ownership requires that an original application be filed. All members of Each participant in a joint venture must be licensed at the time of bidding. (3-19-99)~~

~~502. SURVIVING PARTNER.~~

~~A surviving member or members of a licensed COPARTNERSHIP by reason of death shall be entitled to continue in business under such license until the expiration date thereof, provided the APPLICATION FOR PERMISSION is made to the Board within thirty (30) days after the death of a member, and the application (for permission) is approved by the Board. (7-1-93)~~

~~503. VOLUNTARY CHANGE IN COPARTNERSHIP.~~

~~Where there is a Voluntary Change of individual partners in the surviving members of a licensed copartnership, limited liability company, or limited liability partnership, due to a reason other than the death of one (1) of the partners, the remaining or succeeding partner member or partners members shall be required to file an application for an original license. (7-1-93)()~~

~~504301. -- 5399. (RESERVED).~~

~~600. COMPLIANCE.~~

~~Licensee shall comply with all the provisions of the Act and the rules and regulations promulgated thereunder. (7-1-93)~~

~~601. SUBCONTRACT LIMIT.~~

~~Licensee shall not subcontract in excess of eighty (80%) percent of the work under any contract to be performed by him as a public works contractor according to the contract prices therein set forth, unless otherwise provided in the specifications of such contract. (7-1-93)~~

~~602. SPECIALTY SUBCONTRACTORS.~~

~~Licensee shall not sublet any part of any contract for specialty construction to a specialty contractor who is not licensed in accordance with this Act. (7-1-93)~~

~~603400. DISPLAY CERTIFICATES - DISPLAY AND POSSESSION.~~

~~Licensee shall sign and display the license certificate issued to him in his main office or chief place of business; and (7-1-93)~~

~~604. POSSESSION OF CERTIFICATE.~~

~~Licensee shall furnish satisfactory evidence of the possession of a license certificate and the current renewal thereof upon the administrator's demand. (7-1-93)()~~

~~605~~401. LICENSE NUMBER ON BIDS.

Licensee shall place his license number on any and all bids submitted or contracts entered into, for any public works projects in the state of Idaho. (7-1-93)

~~606. FILE RENEWAL.~~

~~Licensee shall prepare and submit a timely application for license renewal. (7-1-93)~~

~~607. (RESERVED).~~

~~608~~402. CHANGES IN LICENSE CERTIFICATE.

When any change in the license certificate has been approved by the Board, a new license certificate shall be issued. (3-19-99)

~~609. USE OF LICENSE BY ANOTHER.~~

~~Licensee shall not aid or abet an unlicensed person to evade the provisions of the Act, or knowingly combine or conspire with an unlicensed person, or allow his license to be used by an unlicensed person, or act as agent or partner or associate or otherwise, of an unlicensed person with intent to evade the provisions of the Act. (7-1-93)~~

~~610. UNLICENSED CONTRACTORS.~~

~~Licensee shall not knowingly enter into a contract with a contractor while such contractor is not licensed. (7-1-93)~~

~~611~~403. -- ~~6499. (RESERVED).~~

7500. PROCEEDINGS FOR DISCIPLINARY ACTIONS.

The procedure for ~~the handling of complaints filed pursuant to Section 54-1914, Idaho Code; disciplinary actions and for the proceedings for the suspension or revocation of a license~~ contested cases shall be as provided in IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," the Administrative Procedure Act, as found in Chapter 67, Title 52, Idaho Code, ~~and Sections 54-1915 through 54-1919, Idaho Code, as amended and as supplemented by~~ these rules. (3-19-99)(____)

7501. FORMS.

The complaint, citation, answer, notice of hearing, decision and order of the ~~Board~~ administrator and other related documents shall be filed in the form and manner prescribed in these rules, in IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and the Administrative Procedure Act. (3-19-99)(____)

7502. TECHNICALITIES OF FORM.

The ~~Board~~ administrator may, ~~in its discretion,~~ during any hearing or proceeding waive any technicalities of form not deemed necessary in the circumstances. (7-1-93)(____)

7503. HEARINGS.

The general procedure for hearings before the administrator and the Bboard shall be as prescribed in these rules and Title 67, Chapter 52, Idaho Code. (3-19-99)(____)

~~704. NOTICE, ANSWER, HEARING, DECISION AND ORDER.~~

~~The notice, answer, hearing, decision and order of the Board in proceedings concerning the impaired financial responsibility of a licensee pursuant to Section 54-1914A, Idaho Code, shall be in the form and manner as those provided in these rules. (7-1-93)~~

~~705. -- 799. (RESERVED).~~

800. HEARING PROCEDURE.

~~In order to expedite hearings and to assist persons appearing before the Public Works Contractors License Board, the Board has adopted the following general procedure: (3-19-99)~~

01. Hearings. ~~Hearings before the Board are conducted in an informal and summary manner. (7-1-93)~~

02. Counsel. ~~Interested persons appearing before the Board may be represented by counsel. (7-1-93)~~

~~03. Notice. Reasonable notice of any hearing will be furnished to any interested persons. (7-1-93)~~

041. Notes. Any interested persons may request, in writing, five (5) days before any scheduled hearing in a contested case that the oral proceedings thereof be taken in the form of stenographic notes to be transcribed at his own expense. (7-1-93)

052. Stipulations. If the parties can agree upon any facts, issues or questions to be presented to the Board, appropriate stipulations may be made. (7-1-93)

063. Continuance. In the event a hearing cannot be completed within the time allotted, the Board may, in its discretion, continue same to a subsequent meeting as it deems necessary for proper consideration of the purpose for the hearing. (7-1-93)

074. Procedure. The Board reserves the right to amend, modify or repeal all or any part of the above procedure or to dispense with any part thereof, at any hearing before the Board, as it may deem necessary in the circumstances. (7-1-93)

~~801-504. -- 8599. (RESERVED).~~

~~900. THE BOARD.~~

~~The Board may, in its discretion, upon the filing of a verified complaint, charging any person or firm with acting in the capacity of a Public Works Contractor without a license, or charging any public officer who has knowingly let a public contract to any person or firm who does not hold a license, as provided in Section 54-1920, Idaho Code, investigate and enter an oral and/or written protest with the interested parties. In any protest entered, the Board may: (7-1-93)~~

~~01. Withdrawal. Seek the withdrawal of any bid made or offered by an unlicensed person; (7-1-93)~~

~~02. Rejection. Seek the rejection of any bid made or offered by an unlicensed person; (7-1-93)~~

~~03. Refusal. Seek the refusal of the payment of any estimate to an unlicensed person or firm; (7-1-93)~~

~~04. Compliance. Seek immediate compliance with the Act by such unlicensed person or firm; (7-1-93)~~

~~05. Restrain. Seek to restrain such unlicensed person or firm from acting as a Public Works Contractor without a license; (7-1-93)~~

~~06. Prevention. Seek to prevent the award of a contract or to obtain the cancellation or revocation of any public contract that has been awarded to an unlicensed person or firm. (7-1-93)~~

~~07. Other. Failing in this, the Board shall refer the complaint and any other related documents to the County Attorney in the County where the events are alleged to have occurred to be processed in the manner provided in Section 54-1920, Idaho Code. (7-1-93)~~

600. CONSTRUCTION MANAGER EXAMINATIONS.

If the applicant fails an examination, the applicant may take the examination a second time. A grade of at least seventy-five percent (75%) shall be required to pass each section of the examination. If the applicant fails to score a passing grade, the applicant must pass all failed sections within one (1) year of the initial test date. If the applicant fails to achieve a passing grade in each individual section on the second examination, the applicant must wait one (1) full year before taking the examination again. The applicant must then take and pass all sections of the examination (receiving no credit for sections successfully completed during the previous year). (____)

9601. -- 999. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-0301 (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 proposed rulemaking. The action is authorized pursuant to Section 54-5005(2), 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 15, 2003.

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 proposed rules specify the requirements for grandfathering, certification, permitting, inspections and education. The rules are necessary to implement provisions of the new statute, Title 54, Chapter 50, Installation of Heating, Ventilation and Air Conditioning Systems, Idaho Code.

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

Fees to be charged for permits and inspections for heating, ventilation and air conditioning systems under the jurisdiction of the state are to be established by the Idaho Heating, Ventilation and Air Conditioning Board as set for in Section 54-5005(1), Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because proposed rules are necessary to implement provisions of Title 54, Chapter 50, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dave Munroe, Administrator, 332-7100.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0301

IDAPA 07
TITLE 07
CHAPTER 01

**07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR
CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY**

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 54-5005(2), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety" (HVAC Rules). ()

02. Scope. These rules establish the minimum standards for heating, ventilation, and air conditioning (HVAC) installation practice, certification, registration, and educational programs. ()

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of this chapter. ()

003. ADMINISTRATIVE APPEALS.

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Section 100, et seq., shall apply to contested cases, in addition to IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety" and the provisions of Title 54, Chapter 50, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Division of Building Safety, HVAC Bureau is located at 1090 E. Watertower Street, Meridian, Idaho. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Division of Building Safety, HVAC Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. The office telephone number is (208) 334-3950 and the facsimile number is (208) 855-2164. ()

006. FILING OF DOCUMENTS.

All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case, must be filed with the administrator of the Division. Communications and documents shall be filed by mail, hand-delivery, or by facsimile transmission. One (1) original must be filed with the administrator, and one (1) copy must be submitted to the opposing parties. Whenever documents are filed by facsimile transmission, originals shall be deposited in the mail the same day or hand-delivered the following business day to the administrator and opposing parties. ()

007. PUBLIC RECORDS ACT COMPLIANCE.

These rules were promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. These rules and all records of the HVAC board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

008. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.

01. Change Of Name. Whenever a change of name occurs for a certified contractor, journeyman, specialty contractor, or registered apprentice, the HVAC board must be notified immediately, in writing, of the change. Documentation confirming the change of name must be provided to the board on request. ()

02. Change Of Address. Whenever a change of mailing address occurs for a certificated contractor, journeyman, specialty contractor, or registered apprentice, the HVAC board must be notified immediately, in writing, of the change. ()

03. Address For Notification Purposes. The most recent mailing address on record with the HVAC board will be utilized for purposes of all written communication with certified contractors, journeymen, specialty contractors, and registered apprentices, including, but not limited to, notification of renewal and notices related to inspections. ()

009. MEETINGS.

HVAC Board meetings are subject to the provisions of the Idaho Open Meeting Law, Title 67, Chapter 23, Idaho Code. ()

010. DEFINITIONS.

01. Administrator. The administrator of the Idaho Division of Building Safety. ()

02. Board. The Idaho Heating, Ventilation, and Air Conditioning (HVAC) Board. ()

03. Bureau. The Idaho Division of Building Safety, Heating, Ventilation, and Air Conditioning Bureau. ()

04. Division. The Idaho Division of Building Safety. ()

05. Additional Definitions. Terms defined in Section 54-5003, Idaho Code, will have the same meaning when utilized in these rules. ()

06. Rules. IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety". ()

011. -- 019. (RESERVED).

020. HVAC CONTRACTOR AND HVAC JOURNEYMAN APPLICATIONS FOR EXAMINATION AND CERTIFICATES OF COMPETENCY, AND REGISTRATION OF APPRENTICES.

Application forms for HVAC contractor, HVAC specialty contractor, and HVAC journeyman examinations or certificates of competency and for HVAC apprentice registrations, shall be printed and made available by the administrator. ()

01. Application Forms. All applications for certificates and all applications for registration shall be submitted on forms provided by the administrator and shall be properly completed, giving all pertinent information, and all signatures shall be notarized. ()

02. Application, Renewal, And Registration Fees. Fees for applications for examination, certificates of competency, renewal of certificates, and fees for apprentice registration shall be as set forth in Section 54-5012, Idaho Code. ()

03. Application Submission. All applications shall be submitted to the Board and shall be approved by an administrator before any examination may be taken and before any certificate of competency is issued. ()

021. HVAC CONTRACTOR CERTIFICATE OF COMPETENCY.

01. Requirements For HVAC Contractor. ()

a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). ()

b. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC journeyman for a period of not less than twenty-four (24) months. ()

c. Examination. Applicants for certification as HVAC contractors must successfully complete the examination designated by the board. ()

02. Alternate Requirements For HVAC Contractor. (Applies only until April 1, 2005). ()

a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). ()

b. Qualification. Proof, satisfactory to the board, of having engaged in the business of HVAC contracting prior to July 1, 2004. Forms of proof include, but are not limited to: ()

i. Copies of business licenses or registrations; ()

ii. Tax returns; ()

iii. Business advertisements; ()

iv. Client affidavits; or ()

v. Descriptions of work done to date. ()

c. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. ()

022. HVAC SPECIALTY CONTRACTOR CERTIFICATE OF COMPETENCY.

01. Requirements For HVAC Specialty Contractor. ()

a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). ()

b. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC specialty journeyman for a period of not less than twenty four (24) months. ()

c. Examination. Applicants for certification as HVAC specialty contractors must successfully complete the examination designated by the board. ()

02. Alternative Requirements For HVAC Specialty Contractor. (Applies only until April 1, 2005). ()

a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). ()

b. Qualification. Proof, satisfactory to the board, of having engaged in the business of HVAC specialty contracting prior to July 1, 2004. Forms of proof include, but are not limited to: ()

i. Copies of business licenses or registrations; ()

ii. Tax returns; ()

iii. Business advertisements; ()

- iv. Client affidavits; or ()
- v. Descriptions of work done to date. ()
- c. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. ()

023. HVAC JOURNEYMAN CERTIFICATES OF COMPETENCY.

01. Requirements For HVAC Journeyman. ()

- a. Experience. Demonstrate, to the satisfaction of the board, a minimum of four (4) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice making HVAC installations on the job under the constant supervision of a qualified HVAC journeyman. ()
- b. Education. Successfully complete any required apprenticeship training courses. ()
- c. Examination. Applicants for certification as HVAC journeymen must successfully complete the examination designated by the board. ()

02. Alternate Requirements For HVAC Journeyman (Applies Only Until April 1, 2005). ()

- a. Qualification. Proof, satisfactory to the board, of having been engaged or being qualified to be engaged in the installation, improvement, extension, alteration, or repair of HVAC systems as a journeyman prior to July 1, 2004. Forms of proof include, but are not limited to: ()
 - i. Copies of journeyman certification; ()
 - ii. Licensure or registration; ()
 - iii. Signed notarized affidavits from employers or labor organizations; or ()
 - iv. Certificates of completion from journeyman educational or training programs. ()
- b. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination is to be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. ()

024. HVAC APPRENTICE REQUIREMENTS FOR REGISTRATION.

Requirements for HVAC apprentice include the following: ()

01. Age. Minimum of sixteen (16) years of age. ()

02. Training. Maintain enrollment in a training program approved by the board. ()

03. Supervision. Work only under the constant on-the-job supervision by a certificated HVAC journeyman. ()

025. -- 049. (RESERVED).

050. HVAC PERMITS.

01. Serial Number. Each permit shall bear a serial number. ()

02. HVAC Contractors And HVAC Specialty Contractors. The Division shall furnish permits to certified HVAC contractors and HVAC specialty contractors upon request. The serial numbers of such permits shall be registered in the name of the HVAC contractor or HVAC specialty contractor to whom they are issued. Permits shall not be transferable. ()

03. Home Owners. Home owners or a contract purchaser of residential property, making HVAC installations on their own residences, coming under the provisions of Section 54-5002, Idaho Code, shall secure an HVAC permit by making application to the Division as provided in Section 54-5016, Idaho Code. ()

04. HVAC Contractors And HVAC Specialty Contractors. HVAC contractors and HVAC specialty contractors shall secure an HVAC permit by making application to the Division as provided in Section 54-5016, Idaho Code. ()

05. Expiration Of Permit. Every permit issued by the Division under the provisions of Section 54-5017, Idaho Code, shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred twenty (120) days from the date of issuance of such permit, or if work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred twenty (120) days. Before work that has been suspended or abandoned for a period of more than one hundred twenty (120) days since originally commenced, may be recommenced, a new permit must first be obtained, and the fee shall be one-half (1/2) the amount required for a new permit for such work; provided, no changes have been made, or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one (1) year. All HVAC fixtures shall be listed on the application for permit. ()

051. -- 059. (RESERVED).

060. REQUIRED INSPECTIONS.

All work performed under a HVAC permit shall be inspected by a designated, qualified, properly identified agent of the authority having jurisdiction to ensure compliance with Title 54, Chapter 50, Idaho Code, and IDAPA 07.07.01. ()

01. Request For Division Of Building Safety Inspection. ()

a. Inspection. Each permit holder shall notify the Division at least one (1) day prior to the desired inspection, Sundays and holidays excluded, that the project is ready for inspection. ()

b. Reinspection. If a reinspection is required after the final inspection, due to a failure to meet requirements of Title 54, Chapter 50, Idaho Code, and/or these rules, the permit holder will be charged a fee not to exceed the actual cost of each reinspection. ()

02. Inspection Tags. Inspectors certify to the permit holder that an inspection has been done by securely attaching the appropriate inspection tag to the equipment. ()

a. Final Inspection Tags. Blue colored "final inspection" tags are attached when the HVAC installation as specified on the permit is complete and conforms to the requirements of the code and rules. ()

b. Inspection Tags for Unacceptable HVAC Installations. Red colored "unacceptable" inspection tags are attached to indicate that the HVAC installation is not acceptable and that corrections are required. ()

c. Work in Progress Tag. Green colored "work in progress" inspection tags are attached following inspection of ground work, rough-in work, or any portion of the installation that is to be covered or otherwise concealed before completion of the entire HVAC installation as specified on the permit. ()

061. HVAC INSTALLATION PERMIT AND INSPECTION FEES - PRIOR TO COMMENCEMENT OF WORK.

01. Residential Single And Duplex Family Dwelling Permit And Inspection Fees. Where a permit

is obtained prior to the commencement of work on residential single and duplex family dwellings, there will be assessed a fifty dollar (\$50) base permit fee plus an inspection fee of: ()

a. Fifty dollars (\$50) for each furnace, furnace-air conditioner combination, heat pump, air conditioner, evaporative cooler, unit heater, space heater, decorative gas-fired appliance, incinerator, boiler, pool heater, and similar fixtures or appliances. Fee includes ducts, vents, and flues attached thereto. ()

b. Fifteen dollars (\$15) for each exhaust or ventilation duct such as dryer vents, range hood vents, cook stove vents, bath fan vents, and similar exhaust and ventilation ducts. ()

c. Fifty dollars (\$50) for the fuel gas piping system. ()

02. Multifamily, Commercial, Institutional, Industrial, And All Other HVAC Installation Permit And Inspection Fees. Where a permit is obtained prior to the commencement of work on multifamily, commercial, institutional, industrial, and all other HVAC installations, there will be assessed a fifty dollar (\$50) base permit fee for each building plus an inspection fee based on the selling price of the completed HVAC installation including equipment, appliances, piping systems, materials, and labor of: ()

a. Three percent (3%) of the value of the HVAC installation up to twenty thousand dollars (\$20,000); plus ()

b. Two percent (2%) of the value of the HVAC installation in excess of twenty thousand dollars (\$20,000) up to one hundred thousand dollars (\$100,000); plus ()

c. One percent (1%) of the value of the HVAC installation in excess of one hundred thousand dollars (\$100,000) up to two hundred thousand dollars (\$200,000); plus ()

d. One-half of one percent (1/2%) of the value of the HVAC installation in excess of two hundred thousand dollars (\$200,000). ()

062. HVAC INSTALLATION PERMIT AND INSPECTION FEES - AFTER COMMENCEMENT OF WORK.

Where a permit is obtained after the HVAC installation work has commenced, the inspection and permit fees to be assessed shall be an amount equal to twice the sum obtained by adding the base fee to the inspection fee that would have been assessed had the permit been obtained prior to the commencement of the installation. ()

063. -- 999. (RESERVED).

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.01.08 - MISCELLANEOUS RULES

DOCKET NO. 08-0108-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-107, 33-2804, 33-3104, 33-3006, 33-4005, and 33-2211, 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 15, 2003.

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:

Waivers of the prohibition on the possession, consumption or sale of alcoholic beverages at college or university-owned, leased, or operated facilities and on campus grounds will be as provided for in the Board's Governing Policies and Procedures.

FEE SUMMARY: There is no fee associated with this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is not controversial in nature and other interested parties would not be harmed as a result of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jimmi Sommer at 334-2270.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Randi McDermott
State Board of Education
650 W. State St.
PO Box 83720
Boise, ID 83720-0037
Phone: 208-334-2270
Fax: 208-334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0108-0301

000. LEGAL AUTHORITY.

All rules in this chapter (IDAPA 08.01.08) are promulgated pursuant to the authority of the State Board of Education under Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-107, 33-2804, 33-3104, 33-3006, 33-4005, and 33-2211, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be known as IDAPA 08.01.08, "Miscellaneous Rules of the State Board of Education." These rules constitute the requirements for miscellaneous rules for public, postsecondary institutions in Idaho. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv) Idaho Code any written interpretation of the rules of this chapter are available at the Board office. ()

003. ADMINISTRATIVE APPEAL.

Unless otherwise provided for in the rules of the Board or in the State Board of Education Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. ()

004. INCORPORATION BY REFERENCE.

There are no documents to incorporate by reference pursuant to, and in accordance with Section 67-5229, Idaho Code. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the SBOE is in Boise, Idaho. The mailing address is PO Box 83720, Boise, ID 83720-0037. The Board's street address is 650 West State Street, Room 307, Boise, Idaho, 83702. The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. ()

007. -- 099. (RESERVED).

100. POSSESSION, CONSUMPTION, AND SALE OF ALCOHOLIC BEVERAGES AT PUBLIC HIGHER EDUCATION INSTITUTIONS.

Illegal possession or consumption of alcoholic beverages is prohibited in college or university-owned, leased, or operated facilities and on campus grounds. (7-1-93)

01. General Use Areas. Alcoholic beverages may not be possessed or consumed under any circumstances in areas open to and most commonly used by the general public. These areas include, but are not limited to, lounges, student union buildings, recreation rooms, conference rooms, athletic facilities, and other public areas of college or university-owned buildings or grounds. (7-1-93)

02. Sale. Sale of alcoholic beverages is prohibited in college or university-owned, leased, or operated facilities and on campus grounds. (7-1-93)

03. Sanctions. Students who violate this policy will be subject to sanctions established by institutional administration. (7-1-93)

04. Guests And Visitors. Guests or visitors must observe these regulations while on campus or other college or university property. Non-compliance may subject a person to sanctions imposed by the college or university, as well as to the provisions of local and state law. (7-1-93)

05. Waivers. Waivers of these provisions are as provided in the State Board of Education Governing Policies and Procedures. ()

101. -- 999. (RESERVED).

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0302 - (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 proposed rulemaking. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 33-1201, 33-1204, 33-1208, 33-1209, and 33-1254, 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 15, 2003.

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: Removes certification manual as a rule by reference and incorporates all current teacher certification requirements into the administrative code, with updates as necessary and appropriate. Adds passage of an appropriate performance assessment as a requirement for Idaho licensure. Adds a fee schedule, which was approved to be removed from Section 33-1205, Idaho Code, and placed in Board rule in the 2003 session. Changes the timeframe for continuing approval of teacher education programs from five to seven years to be consistent with national accreditation standards. Provides updates to section on school facilities to be consistent with recent statutory changes.

FEE SUMMARY: Fees for teacher certification are included in this proposed rule. Certification fees have been and continue to be set in Section 33-1205, Idaho Code; however, the fee provisions in Section 33-1205, Idaho Code, will sunset on December 31, 2004, at which time they "shall be as specified by rule of the state board of education". The fee levels provided in this proposed rule are in the exact same amount as those fees currently provided for in Section 33-1205, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is not controversial in nature and other interested parties would not be harmed as a result of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jimmi Sommers at 334-2270.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Randi McDermott
State Board of Education
650 W. State St.
PO Box 83720, Boise, ID 83720-0037
Phone: 208-334-2270 / Fax: 208-334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0301

004. INCORPORATION BY REFERENCE.

The State Board of Education adopts and incorporates into its rules: (4-5-00)

~~01. **Incorporated Document.** *The Idaho Department of Education Certification Standards and Code of Ethics for the Idaho Teaching Profession as approved on October 19, 2000.* (3-30-01)~~

~~02. **Document Availability.** *The Idaho Department of Education Certification Standards and Code of Ethics for the Idaho Teaching Profession are available at the Idaho State Department of Education at 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0027.* (3-30-01)~~

~~031. **Incorporated Document.** The Idaho Standards for the Initial Certification of Professional School Personnel as approved on ~~October 19, 2000~~ in November 2003. (3-30-01)()~~

~~042. **Document Availability.** The Standards are available at the Office of the State Board of Education, 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0037, and can also be accessed electronically at <http://www.sde.state.id.us/osbe> www.idahoboardofed.org. (3-30-01)()~~

~~053. **Incorporated Document.** The Standards for Idaho School Buses and Operations as approved on November 15, 2001. (7-1-02)~~

~~064. **Document Availability.** The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (7-1-02)~~

~~075. **Incorporated Document.** The Idaho Standards for Public School Driver Education and Training as approved on November 22, 2002. (5-3-03)~~

~~086. **Document Availability.** The Idaho Standards for Public School Driver Education and Training are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (5-3-03)~~

~~097. **Incorporated Document.** The Idaho Driver Education Administrative Manual as approved on October 17, 1996. (5-3-03)~~

~~108. **Document Availability.** The Idaho Driver Education Administrative Manual is available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (5-3-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

~~01. **Active Teacher.** K-12 teacher with a valid Idaho certificate who is currently teaching in an Idaho K-12 classroom/school. ()~~

~~02. **Alternative Routes.** Routes to teacher certification designed for candidates who want to enter the teaching profession from non-education professions or the para-educator profession, or for teachers lacking certification in a specific area defined as an emergency district need. ()~~

~~03. **Credential.** The general term used to denote the document on which all of a person's educational certificates and endorsements are listed. The holder is entitled to provide educational services in any and/or all areas listed on the credential. ()~~

~~04. **Endorsement.** Term used to refer to the content area or specific area of expertise in which a holder is granted permission to provide services. ()~~

05. Idaho Student Achievement Standards. Standards of achievement for Idaho's K-12 students. See IDAPA 08.02.03, "Rules Governing Thoroughness". ()

06. Institutional Recommendation. Signed form or written verification from an accredited institution with an approved teacher preparation program stating that an individual has completed the program and is now being recommended for state certification. ()

07. Orientation. School district/school process used to acquaint teachers new to district/school on its policies, procedures and processes. ()

08. Para-Educator. Aides and assistants employed by school districts to supplement instruction and provide additional assistance to students. ()

09. Pedagogy. Teaching knowledge and skills. ()

~~0078.~~ -- 010. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~013. -- 019.~~ (RESERVED).

02013. CERTIFICATION OF TEACHERS TRAINED IN FOREIGN INSTITUTIONS.

Considering credentials for teacher certification submitted by persons trained in the institutions of foreign countries will be initiated by a translation and evaluation of the applicant's credentials. (4-1-97)

01. Determination Of Eligibility. Determination of eligibility for certification will be made by the ~~certification office~~ State Department of Education as the agent of the State Board of Education. Appeals may be made to the Professional Standards Commission, (PSC). (Section 33-1209, Idaho Code) (~~4-1-97~~)()

02. Other Procedures. All other procedures in effect at the time must be followed at the time of application. (4-1-97)

~~021. -- 029.~~ (RESERVED).

03014. CERTIFICATES ISSUED TO APPLICANTS FROM REGIONALLY ACCREDITED INSTITUTIONS.

01. The Department Of Education. The department of education is authorized to issue Idaho Certificates to applicants from regionally accredited institutions meeting requirements for certification or equivalent (i.e., those based on a bachelor's degree) in other states when they substantially meet the requirements for the Idaho Certificate. ~~The Teacher Certification Office will determine if an applicant's official transcripts meet the requirements.~~ (Sections 33-1203; 33-2203 Idaho Code) (~~4-1-97~~)()

02. The State Division Of ~~Vocational~~ Professional-Technical Education. The state division of ~~vocational~~ professional-technical education is authorized to determine whether applicants meet the requirements for instructing or administering ~~vocational~~ professional-technical programs at the secondary and postsecondary levels. (Section 33-2203, Idaho Code) (~~4-1-97~~)()

05015. IDAHO INTERIM CERTIFICATE.

~~01.~~ Issuance of interim certificate. The State Department of Education ~~teacher certification office~~ is authorized to issue a non-renewable, three-year (3) interim certificate to those applicants who hold a valid certificate/license from another state. (~~5-3-03~~)()

~~02. Waiver Of Deficiencies. Specific academic deficiencies in an endorsement area may be waived upon verification of three (3) years of satisfactory employment in Idaho in the area of endorsement. (5-3-03)~~

07016. IDAHO EDUCATOR CREDENTIAL.

The State Board of Education ~~will~~ authorizes the ~~Office of Teacher Certification~~ State Department of Education to issue ~~the following~~ certificates and endorsements ~~on the IDAHO EDUCATOR CREDENTIAL~~ to those individuals meeting the specific requirements for each area provided herein. ~~The requirements for each certificate and endorsement are outlined in the Professional School Personnel Certification Standards Manual.~~ (Section 33-1201, Idaho Code)

TEACHING CERTIFICATES
Standard Elementary, K-8
Standard Exceptional Child, K-12
Standard Secondary, 6-12
Occupational Specialist

ENDORSEMENTS, K-12
Art
Bilingual Education
English as a Second Language
Exceptional Child, Generalist
Exceptional Child, Hearing Impaired
Exceptional Child, Multiple Handicapped
Exceptional Child, Physically Handicapped
Exceptional Child, Seriously Emotionally Disturbed
Exceptional Child, Severe Retardation
Exceptional Child, Visually Impaired
Foreign Language
Gifted and Talented
Media Generalist
Music
Physical Education
Reading

ENDORSEMENTS 6-12
Agriculture, Science and Technology

ENDORSEMENTS 6-12
<i>American Government</i>
<i>American Studies</i>
<i>Anthropology</i>
<i>Art</i>
<i>Art-Crafts</i>
<i>Basic Math</i>
<i>Bilingual Education</i>
<i>Biological Science</i>
<i>Business Education</i>
<i>Chemistry</i>
<i>Communication</i>
<i>Computer Applications</i>
<i>Consumer Economics</i>
<i>Drafting</i>
<i>Dramatics</i>
<i>Driver Education</i>
<i>Early Childhood/Early Childhood-Special Education</i>
<i>Blended Certificate (Birth-Grade 3)</i>
<i>Earth Science</i>
<i>Economics</i>
<i>Electricity-Electronics</i>
<i>English</i>
<i>English as a Second Language (ESL)</i>
<i>Family and Consumer Sciences</i>
<i>Foreign Language</i>
<i>Geography</i>
<i>Health</i>
<i>History</i>
<i>Humanities</i>
<i>Journalism</i>
<i>Marketing Education</i>
<i>Music</i>
<i>Natural Science</i>
<i>Physical Education</i>

ENDORSEMENTS 6-12
<i>Physical Education – Health</i>
<i>Philosophy</i>
<i>Physical Science</i>
<i>Physics</i>
<i>Political Science</i>
<i>Psychology</i>
<i>Reading</i>
<i>Social Studies</i>
<i>Sociology</i>
<i>Sociology-Anthropology</i>
<i>Speech</i>
<i>Speech-Drama</i>
<i>Standard Math</i>
<i>Technology Education</i>
<i>Work-Based Learning Coordinator</i>

ADMINISTRATOR CERTIFICATE
<i>Director of Special Education and Related Services, Pre-K-12</i>
<i>Principal, Pre-K-12</i>
<i>Superintendent</i>
<i>Professional-Technical</i>

PUPIL PERSONNEL CERTIFICATE
<i>Counselor, K-12</i>
<i>Consulting Teacher</i>
<i>School Nurse</i>
<i>School Psychologist</i>
<i>School Social Worker</i>
<i>Speech Language Pathologist</i>
<i>Standard Audiology</i>
<i>Supervisor/Coordinator of Special Education</i>

LIMITED CERTIFICATES
Consultant Specialist
Interim Occupational
Letter of Authorization
Limited Occupational Specialist
Limited Transitional
Postsecondary Specialist
Teacher Trainee

(4-5-00)()

~~01. **Letters Of Authorization.** Letters of authorization allow Idaho school districts to request emergency certification when a professional position cannot be filled. A request for a Letter of Authorization for a teacher to serve in a position for which the teacher is not certificated will be sent to the State Department of Education, Certification Office. The request and supporting information will be reviewed by the Professional Standards Commission. The final recommendation of the Commission will be submitted to the State Board of Education by the Superintendent of Public Instruction. A detailed description of the procedure and policy for the above rule is found in the Teacher Certification Manual.~~ (4-1-97)

~~02. **Consultant Specialist.** At the request of a school district, the State Department of Education may issue a consultant specialist certificate to highly and uniquely qualified persons. The use of the certificate is limited to the applicant's district and is valid for one (1) year. It is intended that use of the consultant specialist provision be exceptional and occasional and not used as a regular hiring practice.~~ (4-1-97)

~~03. **Certification Standards For Professional Technical Educators.** Teachers of professional-technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a secondary teaching credential or on an Occupational Specialist Certificate. Detailed description of the procedure and policy for the above rule is found in the Teacher Certification Manual.~~ (4-5-00)

~~04. **Postsecondary Specialist.** A post-secondary specialist certificate will be granted to teaching faculty of Idaho public post-secondary institutions, who are not otherwise certificated, upon recommendation by the post-secondary institution (dean level or above) to be eligible to teach in the public schools. The certificate will be issued by the State Department of Education. It is intended that the certificate be used primarily for distance education and "virtual university" programs.~~ (4-1-97)

~~05. **Grandfathering.** All credentials issued prior to July 1, 1997 and kept current are authorized for continued use. Current renewal requirements of the State Board of Education must be met for renewal of the credential. If a credential is allowed to lapse, all current requirements for initial certification apply.~~ (4-1-97)

017. CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.
State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. ()

018. STANDARD ELEMENTARY CERTIFICATE.
A Standard Elementary Certificate makes an individual eligible to teach grades Kindergarten (K) through eight (8), and may be issued to any person who has a bachelor's degree from an accredited college or university and who meets the following requirements: ()

01. Professional Education Core Requirements. ()

a. A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, and methodological foundations and in the professional subject matter of elementary education, which shall include at least six (6) semester credit hours, or nine (9) quarter credit hours, in developmental reading and its application to the content area. ()

b. At least six (6) semester credit hours, or nine (9) quarter credit hours, of elementary student teaching or two (2) years of satisfactory experience as a teacher in grades K-8. ()

02. General Education Requirements. A minimum of forty-four (44) semester credit hours, or sixty-six (66) quarter credit hours, in general education selected from the following areas: the humanities, the social sciences, the fine arts, mathematics, natural sciences, and language skills. These credits shall include the following: ()

a. Twelve (12) semester credit hours, or eighteen (18) quarter credit hours, of English, including composition and literature. ()

b. Twelve (12) semester credit hours, or eighteen (18) quarter credit hours, of social science, including U.S. history and/or American (federal) government (psychology will not satisfy this requirement). Course work accepted as social science shall be earned through these departments: History, Political Science, Sociology, Anthropology, Economics and/or Geography. ()

c. Eight (8) semester credit hours, or twelve (12) quarter credit hours, in two (2) or more areas of natural science (psychology will not satisfy this requirement). The three (3) natural science areas are: Biological Science, Physical Science and Earth Science. ()

d. Three (3) semester credit hours, or four (4) quarter credit hours, of fine arts (music or art) department course work. ()

e. Six (6) semester credit hours, or nine (9) quarter credit hours, in math department course work. ()

f. Three (3) semester credit hours, or four (4) quarter credit hours, in the content or methods of physical education and/or health education, exclusive of activity classes. ()

03. Additional Requirements. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades Kindergarten (K) through eight (8).()

04. Ninth Grade Endorsement. If an individual with a Standard Elementary Certificate completes the requirements for a subject area endorsement as outlined under requirements for a Standard Secondary Certificate, an endorsement allowing teaching of that subject through grade nine (9) may be added to the Standard Elementary Certificate. ()

05. Proficiency. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved elementary content area and pedagogy assessments. ()

019. EARLY CHILDHOOD / EARLY CHILDHOOD SPECIAL EDUCATION BLENDED CERTIFICATE.

An Early Childhood / Early Childhood Special Education Blended Certificate is non-categorical and makes an individual eligible to teach in any educational setting for youth from birth to grade three (3), including those who are at-risk or have developmental delays. The Early Childhood / Early Childhood Special Education Blended Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements: ()

01. Professional Education Requirements. ()

a. A minimum of thirty (30) semester credit hours, or forty-five (45) quarter credit hours, in the philosophical, psychological, and methodological foundations, in instructional technology, and in the professional subject matter of early childhood and early childhood-special education. The professional subject matter of early childhood and early childhood-special education shall include course work specific to the young child from birth through grade three (3) in the areas of child development and learning; curriculum development and implementation; family and community relationships; assessment and evaluation; professionalism; and, application of technologies. ()

b. The required thirty (30) semester credit hours, or forty-five (45) quarter credit hours, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading. ()

02. General Education Requirements. A minimum of forty-four (44) semester credit hours, or sixty-six (66) quarter credit hours, in general education selected from the following areas: the humanities, the social sciences, the fine arts, mathematics, natural sciences, and language skills. These credits shall include the following: ()

a. Twelve (12) semester credit hours, or eighteen (18) quarter credit hours, of English, including composition and literature. ()

b. Twelve (12) semester credit hours, or eighteen (18) quarter credit hours, of social science, including U.S. history and/or American (federal) government (psychology will not satisfy this requirement). Course work accepted as social science must be earned through these departments: History, Political Science, Sociology, Anthropology, Economics and/or Geography. ()

c. Eight (8) semester credit hours, or twelve (12) quarter credit hours, in two (2) or more areas of natural science (psychology will not satisfy this requirement). The three (3) natural science areas are: Biological Science, Physical Science and Earth Science. ()

d. Three (3) semester credit hours, or four (4) quarter credit hours, of fine arts (music or art) department course work. ()

e. Six (6) semester credit hours, or nine (9) quarter credit hours, in math department course work. ()

f. Three (3) semester credit hours, or four (4) quarter credit hours, in the content or methods of physical education and/or health education, exclusive of activity classes. ()

03. Additional Requirements. An institutional recommendation from an accredited college or university, and passage of the Idaho Comprehensive Literacy Exam. ()

04. Proficiency. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved early-childhood assessments. ()

020. STANDARD SECONDARY CERTIFICATE.

A Standard Secondary Certificate makes an individual eligible to teach in grades six (6) through twelve (12). A Secondary Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements: ()

01. Professional Education Core Requirements. ()

a. A minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, and methodological foundations, instructional technology, and in the professional subject matter of secondary education, which must include at least three (3) semester credit hours, or four (4) quarter credit hours, of reading in the content area. ()

b. The required twenty (20) semester credit hours, or thirty (30) quarter credit hours, must also include at least six (6) semester credit hours, or nine (9) quarter credit hours, of secondary student teaching or two (2) years of satisfactory experience as a teacher in grades six (6) through twelve (12). ()

02. General Education Requirements. Preparation in at least two (2) fields of secondary teaching: a major subject of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, and a minor subject of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of a major and minor field. ()

03. Additional Requirements. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades six (6) through twelve (12). ()

04. Proficiency. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must have a qualifying score on an approved content area assessment in any area(s) for which the certificate or endorsement(s) will be applied. ()

021. ENDORSEMENTS.

Holders of a Secondary Certificate or a Standard Elementary Certificate may be granted endorsements in subject areas as provided herein. An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching major or minor if such statements originate in the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. To add an endorsement to an existing credential, an individual shall complete the credit hour requirements as provided herein and shall also meet or exceed the state qualifying score on appropriate, state approved content, pedagogy and performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours. ()

022. ENDORSEMENTS A - D.

01. Agriculture Science And Technology (6-12). ()

a. Forty-five (45) semester credit hours including course work in each of the following areas: agriculture education; agriculture mechanics; agriculture business management; soil science; animal science; and plant science. ()

b. Occupational teacher preparation coursework as provided in Sections 034 through 038. ()

02. American Government (6-12). Twenty (20) semester credit hours, including six (6) semester credit hours in American Government; six (6) semester credit hours in American History; three (3) semester credit hours in Comparative Government; with remaining course work taken in History or Political Science. ()

03. American Studies (6-12). Twenty (20) semester credit hours in the area of American Studies. ()

04. Anthropology (6-12). Twenty (20) semester credit hours in the area of Anthropology. ()

05. Art (K-12 or 6-12). Twenty (20) semester credit hours in the area of Art. To obtain an Art (K-12) endorsement, applicants holding a Secondary Certificate must complete an elementary methods course, and applicants holding a Standard Elementary Certificate must complete a secondary methods course. ()

06. Arts And Crafts (6-12). Twenty (20) semester credit hours to include coursework in four (4) of the following areas: woodworking; plastics; metal art; graphic art; ceramics; leather work; or drafting. ()

07. Bilingual Education (K-12). Twenty (20) semester credit hours to include six (6) upper division credits in Modern Languages; three (3) semester credit hours in Cultural Diversity in the target language and/or in cross-cultural or multi-cultural course work; seven (7) semester credit hours in English as a Second Language, which

shall include three (3) semester credit hours in Methodology and one (1) semester credit hour in Bilingual Practicum or Field Experience, with remaining credit hours in foundations, applied linguistics, testing, or bilingual education. Additionally, no more than five (5) semester credit hours of workshop credit will be accepted for this endorsement.

()

08. Biological Science (6-12). Twenty (20) semester credit hours to include at least six (6) semester credit hours of course work in each of the following areas: Botany and Zoology. ()

09. Business Technology Education (6-12). ()

a. Twenty (20) semester credit hours to include course work in each of the following areas: Intermediate or Advanced Keyboarding; Accounting; and Business/Office Procedures. ()

b. Occupational teacher preparation as provided in Sections 034 through 038. ()

10. Chemistry (6-12). Twenty (20) semester credit hours in the area of Chemistry. ()

11. Communication (6-12). Follow one (1) of the following options: ()

a. Option I: Twenty (20) semester credit hours to include Methods of Teaching Speech/Communications plus course work in at least four (4) of the following areas: Interpersonal Communication/Human Relations; Argumentation/Personal Persuasion; Group Communications; Nonverbal Communication; Public Speaking; and Drama/Theater Arts. ()

b. Option II: Possess an English endorsement plus at least twelve (12) semester credit hours distributed among the following: Interpersonal Communication/Human Relations, Public Speaking, and Methods of Teaching Speech/Communication. ()

12. Communications/Drama (6-12). Twenty (20) semester credit hours including a minimum of six (6) credit hours in each of the following areas: Communications and Drama. ()

13. Consumer Economics (6-12). Hold an endorsement in Agricultural Science and Technology; Family and Consumer Sciences; Social Studies; Business Technology Education; or Marketing Technology Education and have at least six (6) semester credit hours in Economics and three (3) semester credit hours in a course designed for the average consumer. ()

14. Drafting (6-12). Twenty (20) semester credit hours in the area of Drafting. ()

15. Dramatics (6-12). Follow one (1) of the following options: ()

a. Twenty (20) semester credit hours, including a minimum of sixteen (16) semester credit hours in Drama or Theater Arts and four (4) semester credit hours in Communications. ()

b. Possess an endorsement in English plus a minimum of six (6) semester credit hours in Drama or Theater Arts. ()

16. Driver Education (6-12). Two (2) semester credit hours in Basic Driver Education for Teachers and two (2) semester credit hours in any of the following: Advanced Driver Education; Driver Simulation Education; Traffic Engineering; General Safety Education; or Highway Transportation. Additionally, an individual must have three (3) years of satisfactory driving experience immediately prior to endorsement as verified by the Motor Vehicle Division of the State Department of Transportation. ()

023. ENDORSEMENTS E - L.

01. Earth Science (6-12). Twenty (20) semester credit hours including course work in each of the following: Earth Science; Astronomy; and Geology. ()

- 02. Economics (6-12).** Twenty (20) semester credit hours in the area of Economics. ()
- 03. Education Media Generalist (K-12).** Twenty (20) semester credit hours in the field of Education Media or Library Science, including a minimum of fifteen (15) credit hours of course work distributed among each of the following: Material Selection/Collection Development; Literature for Youth; Organization/Administration of Educational Materials; Library Automation/Information Technology Research Methods. ()
- 04. English (6-12).** Twenty (20) semester credit hours, including three (3) semester credit hours in Linguistics/Grammar, three (3) semester credit hours in American Literature, three (3) semester credit hours in English Literature, six (6) semester credit hours in Advanced Composition, excluding the introductory sequence designed to meet general education requirements. Remaining credits must be completed in the English Department, and must include some course work in Writing Methods for Teachers of Secondary Students. ()
- 05. English As A Second Language (ESL) (K-12).** Twenty (20) semester credit hours to include four (4) semester credit hours in Modern Languages; three (3) semester credit hours in Cultural Diversity; three (3) semester credit hours in ESL Methods; three (3) semester credit hours in Philosophical Foundations, Theory, Testing/Identification of Limited English Proficient Students OR Applied Linguistics in ESL; one (1) semester credit in ESL Practicum or Field Experience; and three (3) semester credit hours in an ESL related elective. Additionally, no more than five (5) semester credits of workshop will be accepted for this endorsement. ()
- 06. Family And Consumer Science (6-12).** ()
- a.** Thirty (30) semester credit hours to include coursework in each of the following: Child/Human Development; Human/Family Relations; Directed Laboratory Experience in Childcare; Clothing and Textiles, Cultural Dress, Fashion Merchandising, or Design Nutrition; Food Preparation, Food Production, or Culinary Arts; Housing, Interior Design, Home Management, or Equipment; Consumer Economics or Family Resource Management; Introduction to Family Consumer Sciences; and, Integration of Family Consumer Sciences or Family Consumer Science Methods. ()
- b.** Occupational Teacher Preparation as provided in Sections 034 through 038. ()
- 07. Foreign Language (6-12 or K-12).** Twenty (20) semester credit hours with course work in a specific foreign language. To obtain an endorsement in a specific foreign language (K-12), applicants holding a Secondary Certificate must complete an elementary methods course, and applicants holding a Standard Elementary Certificate must complete a secondary methods course. ()
- 08. Geography (6-12).** Twenty (20) semester credit hours in the area of Geography. ()
- 09. Geology (6-12).** Twenty (20) semester credit hours in the area of Geology. ()
- 10. Gifted And Talented (K-12).** Twenty (20) semester credit hours, to include three (3) semester credits hours in each of the following: Foundations of Gifted and Talented Education; Creative/Critical Thinking Skills for Gifted and Talented Students; Social and Emotional Needs of Gifted and Talented Students; Curriculum and Instruction for Gifted and Talented Students; and Practicum and Program Design for Gifted and Talented Education. ()
- 11. Health (6-12).** Twenty (20) semester credit hours to include course work in Organization/Administration of a School Health Program; Health Science; Methods of Teaching Health; and a minimum of twelve (12) semester credit hours in at least four (4) of the following areas: Mental Health; Consumer Health; Nutrition; Human Sexuality; Aging, Death and Dying; Safety and Accident Prevention; Fitness/Wellness; Substance Use and Abuse; Disease; and Community/Environmental Health. ()
- 12. History (6-12).** Twenty (20) semester credit hours to include at least nine (9) semester credit hours in United States History, and at least three (3) semester credit hours in American Federal Government. Remaining course work must be in History or Political Science. ()
- 13. Humanities (6-12).** An endorsement in English or History, and twenty (20) semester credit hours.

including at least six (6) semester credit hours in each of two (2) of the following: Art; Drama; English; History; Humanities; Music; Foreign Language; and Philosophy. ()

14. Journalism (6-12). Follow one (1) of the following options: ()

a. Option I: Twenty (20) semester credit hours to include a minimum of sixteen (16) semester credit hours in Journalism and four (4) semester credit hours in English. ()

b. Option II: Possess an English endorsement with a minimum of six (6) semester credit hours in Journalism. ()

024. ENDORSEMENTS M - Z.

01. Marketing Technology Education (6-12). ()

a. Twenty (20) semester credit hours to include course work in each of the following areas: Marketing; Management; Economics; Coordination of Cooperative Programs; Merchandising/Retailing; and Curriculum and Materials Marketing, with remaining credit hours in the field of business. ()

b. Occupational teacher preparation as provided in Sections 034 through 038. ()

02. Mathematics - Basic (6-12). Twenty (20) semester credit hours in Mathematics including course work in Algebra, Geometry, and Trigonometry. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics. ()

03. Mathematics - Standard (6-12). Twenty (20) semester credit hours including course work in Calculus and Analytical Geometry, with remaining course work in Mathematics. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics. ()

04. Music (6-12 or K-12). Twenty (20) semester credit hours to include course work in the following: Theory and Harmony; Music History or Appreciation; Conducting; Applied Music; and Music Methods/Materials. To obtain a Music K-12 endorsement, applicants holding a Secondary Certificate must complete an elementary music methods course. ()

05. Natural Science (6-12). Must have an endorsement in Biology, Physics, Chemistry, or Geology, plus a minimum of twenty (20) semester credit hours to include a basic course plus a lab in each of the following areas: Biology; Physics; Chemistry; and Geology. The remaining course work may be taken from any of the following Natural Science areas: Biological Sciences; Botany; Zoology; Physical Science; Earth Science; Astronomy; Oceanography; Ecology; or Limnology ()

06. Philosophy (6-12). Twenty (20) semester credit hours in the area of Philosophy. ()

07. Physics (6-12). Twenty (20) semester credit hours in the area of Physics. ()

08. Physical Education (PE) (6-12 or K-12). Twenty (20) semester credit hours to include course work in each of the following areas: Sport Skills; Secondary PE Methods; Student Evaluation in PE; Administration of a PE Program; Health; PE for Special Populations; Exercise Science; Sports Psychology or Sociology; and Movement. To obtain a Physical Education K-12 endorsement, applicants holding a Secondary Certificate must complete an elementary PE methods course. ()

09. Physical Education/Health. ()

10. Physical Science (6-12). Twenty (20) semester credit hours in the area of physical science to include a minimum of eight (8) semester credit hours in each of the following: Chemistry and Physics. ()

11. Political Science. Twenty (20) semester credit hours in the area of Political Science. ()

- 12. Psychology.** Twenty (20) semester credit hours in the area of Psychology. ()
- 13. Reading (6-12 or K-12).** Twenty (20) semester credit hours in the area of reading including a minimum of fifteen (15) semester credit hours distributed among each of the following areas: Foundations of Reading or Developmental Reading; Reading in the Content Area; Literature for Youth; Psycholinguistics or Language Development; and Corrective/Diagnostic/Remedial Reading. To obtain a Reading K-12 endorsement, applicants holding a Secondary Certificate must complete an elementary methods course. ()
- 14. Social Studies (6-12).** Must have an endorsement in History, Political Science, Economics, Anthropology, Sociology, Psychology, or Geography plus a minimum of twenty (20) semester credit hours of which the following are required: a minimum of six (6) semester credit hours of general U.S. history survey; a minimum of three (3) semester credit hours of American Federal Government. The remaining semester credit hours must include work from all of the following areas: World History, Geography, Economics, Anthropology, Sociology, and Psychology. ()
- 15. Sociology (6-12).** Twenty (20) semester credit hours in the area of Sociology. ()
- 16. Sociology/Anthropology (6-12).** Twenty (20) semester credit hours including a minimum of six (6) semester credit hours in each of the following: Anthropology and Sociology. ()
- 17. Technology Education (6-12).** ()
- a.** Twenty (20) semester credit hours to include course work in each of the following areas: Communication Technology; Computer Applications; Construction Technology; Electronics Technology; Manufacturing Technology; Power, Energy and Transportation; and Principles of Technology. ()
- b.** Occupational teacher preparation as provided in Sections 034 through 038. ()
- 025. NATIVE AMERICAN LANGUAGE (SECTION 33-1280, IDAHO CODE).**
Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language. Upon receiving the names of American Indian languages teachers designated by an Indian tribe, the State Department of Education shall authorize those individuals as American Indian languages teachers. ()
- 026. ADMINISTRATOR CERTIFICATE.**
Every person who serves as a superintendent, a secondary school principal, or principal of an elementary school with eight (8) or more teachers (including the principal), or is assigned administrative duties over and above those commonly assigned to teachers, is required to hold an Administrator Certificate. The certificate may be endorsed for service as a school principal, a superintendent, or a director of special education and related services. Assistant superintendents are required to hold the Superintendent endorsement. Assistant principals or vice-principals are required to hold the Principal endorsement. Applicants for the Director of Special Education and Related Services endorsement will hold that endorsement on an Administrator Certificate. Possession of an Administrator Certificate does not entitle the holder to serve as a teacher at a grade level for which he is not qualified or certificated. ()
- 01. School Principal Endorsement (Pre-K-12).** To be eligible for an Administrator Certificate endorsed for School Principal Pre-K-12, a candidate must have satisfied the following requirements: ()
- a.** Hold a master's degree from an accredited college or university. ()
- b.** Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in a school setting. ()
- c.** Have completed an administrative internship, or have one (1) year of experience as an administrator in grades Pre-K-12. ()
- d.** Provide verification of completion of a state-approved program of at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, of graduate study in school administration for the preparation of

school principals at an accredited college or university. This program shall include competencies in the following areas: leadership, ethics, and management of change; all forms of communication, including technology, advocacy, and mediation; customer involvement and public relations; staff development and supervision of instruction; school law and finance (including special education), and grant writing; curriculum development, integration of technology, delivery, and assessment; education of all populations, including special education; and, student behavior management/positive behavior supports/effective discipline. ()

e. An institutional recommendation is required for a School Principal Pre-K-12 Endorsement. ()

02. Superintendent Endorsement. To be eligible for an Administrator Certificate with a Superintendent endorsement, a candidate must have satisfied the following requirements: ()

a. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. ()

b. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12 while under contract in a school setting. ()

c. Have completed an administrative internship for the superintendent endorsement or have one (1) year of out-of-state experience as an assistant superintendent or superintendent in grades Pre-K-12, while holding that state's administrative certificate. ()

d. Provide verification of completion of an approved program of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, of post-master's degree graduate study for the preparation of school superintendents at an accredited college or university. This program in school administration and interdisciplinary supporting areas shall include competencies in the following areas in addition to those required for the School Principal Pre-K-12 endorsement: advanced school finance, grant writing, and generation of additional sources of revenue; policy development and school board operations/relations; district-wide support services; employment practices and negotiations; educational product marketing and community relations; and, special services and federal programs. ()

e. An institutional recommendation is required for a School Superintendent Endorsement. ()

03. Director Of Special Education And Related Services Endorsement (Pre-K-12). To be eligible for an Administrator Certificate endorsed for Director of Special Education and Related Services Pre-K-12, a candidate must have satisfied all of the following requirements: ()

a. Hold a master's degree from an accredited college or university. ()

b. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting. ()

c. Obtain college or university verification of demonstrated competencies in the following areas: organization and administration of student services, including foundations of special education; leadership, ethics, and management of change; all forms of communication, including technology, advocacy, mediation, and counseling with parents of children with disabilities; customer involvement and public relations; staff development and supervision of instruction; policy development as related to special education and related services; school law and finance as related to special education and related services, and grant writing; curriculum development, integration of technology, delivery, and assessment as related to special education and related services; student behavior management/positive behavioral supports/effective discipline; and, diagnosis and remediation in special education. ()

d. Have completed an administrative internship/practicum in the area of administration of special education and related services. ()

e. An institutional recommendation is required for Director of Special Education and Related Services Pre-K-12 Endorsement. ()

027. PUPIL PERSONNEL SERVICES CERTIFICATE.

Persons who serve as school counselors, school psychologists, speech-language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify. ()

01. Counselor Endorsement (K-12). To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. ()

a. Hold a master's degree and provide verification of completion of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, one-half of which must be in a K-12 school setting. Previous school counseling experience may be considered to help offset the field experience clock hour requirement. ()

b. An institutional recommendation is required for a School Counselor K-12 Endorsement. ()

02. School Psychologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: ()

a. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program. ()

b. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology. ()

c. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum three hundred (300) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. ()

03. School Nurse Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through completion of the following requirements. ()

a. The candidate must possess a valid registered nursing certificate issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health-related field from an accredited institution. ()

b. Nine (9) semester credit hours shall be taken for university or college credit in at least three (3) of the following areas: assessment of student health; child and adolescent health issues; counseling, psychology, or social work; methods of education instruction. Additionally, must have two (2) years' full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. ()

04. Provisional Endorsement - School Nurse. This certificate will be granted for those who do not meet the educational requirements but who hold a valid registered nursing certificate in Idaho. An Interim Certificate - School Nurse will be issued for two (2) years while the applicant is meeting the educational requirements, and it is not renewable. ()

05. Speech-Language Pathologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. ()

06. Audiology Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. ()

07. School Social Worker Endorsement. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options:

a. A master's degree in social work from an Idaho college or university approved by the State Board of Education, or a master's degree in social work from an out-of-state college or university. The program must be currently approved by the state educational agency of the state in which the program was completed. ()

b. A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas: understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. ()

028. EXCEPTIONAL CHILD CERTIFICATE. Holders of this certificate work with children who have been identified as having an educational impairment. ()

01. Generalist Endorsement (K-12). The Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: ()

a. Completion of a baccalaureate degree from an accredited college or university. ()

b. Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. ()

c. Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. ()

d. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. ()

02. Hearing Impairment (K-12). Completion of a minimum of thirty (30) semester credit hours in the area of hearing impairment. An institutional recommendation specific to this endorsement is required. ()

03. Visual Impairment (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. ()

04. Seriously Emotionally Disturbed (K-12). Completion of a program of a minimum of thirty (30)

semester credit hours in the area of seriously emotionally disturbed. An institutional recommendation specific to this endorsement is required. ()

05. Severe Retardation (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of severe retardation. An institutional recommendation specific to this endorsement is required. ()

06. Multiple Impairment (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of multiple impairment. An institutional recommendation specific to this endorsement is required. ()

07. Physical Impairment (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of physical impairment. An institutional recommendation specific to this endorsement is required. ()

029. CONSULTING TEACHER ENDORSEMENT.

To be eligible for a Consulting Teacher endorsement on the Standard Exceptional Child Certificate, the Early Childhood /Early Childhood Special Education Blended Certificate (Birth-Grade 3), the Standard Elementary Certificate or the Standard Secondary Teaching Certificate, a candidate must have satisfied the following requirements: ()

01. Education Requirements. Completion, in an accredited college or university, of a master's degree or an approved fifth year program as defined by the Idaho State Board of Education, and have demonstrated competencies in the following areas: Assessment of learning behaviors; Individualization of instructional programs based on educational diagnosis; Behavioral and/or classroom management techniques; Program implementation and supervision; Knowledge in use of current methods, materials and resources available and management and operation of media centers; Ability in identifying and utilizing community or agency resources and support services; and Counseling skills and guidance of professional staff. ()

02. Experience. Completion of a minimum of three (3) years' teaching experience, at least two (2) years of which must be in a special education classroom setting. ()

SECTION 030 HAS BEEN MOVED TO SECTION 014

030. SUPERVISOR/COORDINATOR OF SPECIAL EDUCATION ENDORSEMENT.

To be eligible for this endorsement on the Standard Exceptional Child Certificate or the Pupil Personnel Certificate endorsed for School Psychologist, Speech-Language Pathologist or Social Worker, a candidate must complete a master's degree program; have a minimum of three (3) years of experience in a special education setting; and obtain college or university verification of demonstrated competencies in special education administration, supervision of instruction and counseling parents of exceptional children. ()

031. -- 0393. (RESERVED).

034. CERTIFICATION STANDARDS FOR PROFESSIONAL-TECHNICAL EDUCATORS.

Teachers of professional-technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a Secondary Teaching Certificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Professional-Technical Education, and application processes are managed by the Division of Professional-Technical Education. ()

035. DEGREE BASED PROFESSIONAL-TECHNICAL CERTIFICATION.

01. Teacher Preparation Through Degreed Program. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural Science & Technology; Business Technology Education; Family & Consumer Science; Marketing Technology

Education; and Technology Education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated four-thousand (4,000) clock hours of related work experience or shall have completed an approved practicum in their respective field of specialization. ()

02. Professional-Technical Administrator Certificate. The Professional-Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of professional-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Professional-Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Professional-Technical Education. ()

a. Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on the secondary teaching credential; ()

b. Provide evidence of a minimum of three (3) years' teaching in an occupational discipline; ()

c. Hold a masters degree; and, ()

d. Completed at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of professional-technical education; administration of personnel; and legal aspects of professional-technical education. Additional course work can be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. ()

e. To renew the Professional-Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for professional-technical teachers. ()

03. Work-Based Learning Coordinator Endorsement. Educators assigned to coordinate approved work-based experiences must hold the Work-Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Secondary Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. ()

04. Career Counselor Endorsement. The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Personnel Services Certificate endorsed Counselor K-12 and who have satisfied the following professional technical requirement: Career Pathways and Professional Technical Guidance; Principles/ Foundations of Professional-Technical Education; and Theories of Occupational Choice. ()

036. INDUSTRY BASED PROFESSIONAL-TECHNICAL CERTIFICATION.

Persons who need to hold the Occupational Specialist Certificate include: secondary educators assigned to Health Occupations Education and to Trades & Industry Education; specialized occupational areas where specific degree-granting professional technical teacher education programs do not exist; and postsecondary professional-technical educators who teach courses to 9-12 students. ()

01. General Requirements. Applicants must: be eighteen (18) years of age; document full-time, successful, recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options: ()

a. Have sixteen-thousand (16,000) hours of full-time, successful, recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit can be counted toward the eight

(8) years on a month-to-month basis for journeyman training and/or postsecondary training successfully completed as a full-time student in an approved/approvable, postsecondary, professional-technical education program. ()

b. Have a bachelor's degree in the specific occupation or related area, plus six-thousand (6,000) hours of full-time, successful, recent, gainful employment in the occupation. ()

c. Meet one (1) of the following: ()

i. Have at least journeyman level plus two (2) years of recent, full-time, gainful, related work experience. A person who has completed a formal apprenticeship program in the occupation or related area for which certification is requested. The apprenticeship must be under the direction of an employer and the Bureau of Apprenticeship and Training or an approved State Apprenticeship Agency; ()

ii. Pass approved state or national certification/certification examination plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis); or ()

iii. Pass approved industry related certification for skill level requirements (vendor and industry specific) plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis). If no competency test exists, a written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required to verify occupational competence. ()

02. Limited Occupational Specialist Certificate. This certificate is issued to individuals who are new to teaching trades and health occupations in public schools. The certificate is valid for three (3) years. ()

a. Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Professional-Technical Education and an approved course in professional technical methods and student assessment. ()

b. Complete a new-teacher induction workshop at the state or district level. ()

c. File a Professional Development Plan with the State Division of Professional-Technical Education. ()

d. Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete course work which includes competencies in four (4) of the following: Principles/ Foundations of Occupational Education; Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; Measurement and Evaluation; and Methods of Teaching Occupational Education. ()

03. Standard Occupational Specialist Certificate. This certificate is issued to individuals who have completed course work equivalent to that required of the Limited Occupational Specialist Certificate. The certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or verification of two hundred-forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a Professional Development Plan for the next certification period. ()

04. Advanced Occupational Specialist Certificate. This certificate is issued to individuals who meet all the requirements outlined below: ()

a. Meet the requirements for the Standard Occupational Specialist Certificate; ()

b. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and ()

c. File a new Professional Development Plan for the next certification period. ()

d. This certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or submit verification of two hundred-forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new Professional Development Plan for the next certification period. ()

037. -- 038. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~041. -- 049. (RESERVED).~~

SECTION 050 HAS BEEN MOVED TO 015

0541. -- 059. (RESERVED).

060. APPLICATION PROCEDURES / PROFESSIONAL DEVELOPMENT.

01. Application For Idaho Certificate. To obtain, renew, or reinstate an Idaho certificate, the applicant will submit an application on a form supplied by the State Department of Education or the State Division of Vocational Professional-Technical Education. *Requirements are listed in the Idaho Certification Manual.* (4-1-97)()

02. State Board Of Education Requirements For Professional Growth. (4-1-97)

a. Credits taken for recertification must be educationally related to the professional development of the applicant. (4-1-97)

b. Graduate or undergraduate credit will be accepted for recertification. Credit must be college transferable and completed through an accredited college or university. (4-1-97)

c. All requests for equivalent inservice training to apply toward recertification must be made through the ~~Teacher Certification Office~~ State Department of Education upon recommendation of the board of trustees consistent with the State Department of Education guidelines. Individuals holding ~~Vocational~~ Professional-Technical Specialist Certificates must receive State Division of ~~Vocational~~ Professional-Technical Education approval of inservice training and course work prior to applying for renewal. (4-1-97)()

d. At least fifteen (15) hours of formal instruction must be given for each hour of inservice credit granted. (4-1-97)

e. Recertification credits may not be carried over from one (1) recertification period to the next. (4-1-97)

f. Certificated personnel teaching in subjects outside their major area of preparation will be encouraged to complete the courses required for major certification endorsement. (4-1-97)

03. State Board Of Education Professional Development Requirements. (4-1-97)

a. Districts will have professional development plans. (4-1-97)

b. All certificated personnel will be required to complete at least six (6) semester hours or the equivalent within the five (5) year period of validity of the certificate being renewed. (4-1-97)

c. At least three (3) semester credits will be taken for university or college credit. Verification will be by official transcript. (4-1-97)

~~061. -- 0695.~~ (RESERVED).

066. FEES.

The state department of education shall maintain a record of all certificates issued, showing names, dates of issue and renewal, and if revoked, the date thereof and the reason therefor. A nonrefundable fee shall accompany each application for a prekindergarten through grade twelve (12) certificate, alternate certificate, change in certificate or replacement as follows: ()

- 01. Initial Certificate.** All types, issued for five (5) years -- seventy-five dollars (\$75). ()
- 02. Renewal Certificate.** All types, issued for five (5) years -- seventy-five dollars (\$75). ()
- 03. Alternate Route Authorization.** All types, issued for one (1) year -- one hundred dollars (\$100). ()
- 04. Additions Or Changes During The Life Of An Existing Certificate.** Twenty-five dollars (\$25). ()
- 05. To Replace An Existing Certificate.** Ten dollars (\$10). ()

SECTION 070 HAS BEEN MOVED TO 016

~~071. -- 079.~~ (RESERVED).

~~**080. ALTERNATE CERTIFICATION.**~~

~~The purpose of this program is to provide an alternative for individuals to become certificated secondary teachers in Idaho without following a standard teacher education program. Qualified applicants will begin contracted teaching earlier and will be admitted to the program using criteria that are different from existing programs but more appropriate for the circumstances. A detailed description of the procedure and policy for the above rule is found in the Teacher Certification Manual. (4-1-97)~~

~~081-67. -- 089.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

100. OFFICIAL VEHICLE FOR APPROVING TEACHER EDUCATION PROGRAMS.

(Section 33-114, Idaho Code) (4-1-97)

01. The Official Vehicle For The Approval Of Teacher Education Programs. The official vehicle for the approval of teacher education programs will be the National Council for Accreditation of Teacher Education (NCATE) approved Idaho Standards for the Initial Certification of Professional School Personnel as approved on ~~October 19, 2000~~ November 2003. The ~~Office of Teacher Certification~~ State Department of Education will transmit to the head of each Idaho college or department of education a copy of all revisions to the Idaho Standards for the Initial Certification of Professional School Personnel. Such revisions will not take effect on approval evaluations of the Idaho program until two (2) years after notification of such revision. The two (2) year deferral may be waived upon written request of the head of the college or department to be evaluated (~~3-30-01~~)()

02. Effective Date. The effective date for the NCATE approved Idaho Standards for the Initial Certification of Professional School Personnel is September 1, 2001. Students with junior or senior standing and

currently enrolled in an institution's program that does not meet the Standards will be eligible for certification in Idaho after successfully completing their program if this program is completed within two (2) years of the September 1, 2001 effective date. All programs not meeting the Standards will be responsible for informing enrolled students of their non-compliance. (3-30-01)

03. Reference Availability. The Idaho Standards for the Initial Certification of Professional School Personnel are incorporated herein by reference and are available for inspection in the Office of the State Board of Education. (3-30-01)

04. Continuing Accreditation. The state of Idaho will follow the National Council for Accreditation of Teacher Education (NCATE) model and pursue continuing approval at the end of ~~five~~ seven (~~5~~) years following baseline approval. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

130. SCHOOL FACILITIES.

Each school facility consists of the site, buildings, equipment, services, and is a critical factor in carrying out educational programs. The focus of concern in each school facility is the provision of a variety of instructional activities and programs, with the health and safety of all persons essential. (4-1-97)

01. Buildings. All school buildings, including portable or temporary buildings, will be designed and built in conformance with the current edition of the codes specified in the ~~Uniform Idaho Building Code Advisory Act, Section 39-4109, Idaho Code, including~~ *but not limited to*, the National Electrical Code, Uniform Plumbing Code, ~~Life Safety Code~~, and Idaho General Safety and Health Standards. All school buildings, including portable or temporary buildings, will meet other more stringent requirements established in applicable local building codes. (~~4-1-97~~)()

02. Inspection Of Buildings. All school buildings, including portable or temporary buildings, will be inspected as provided in Section 39-4130, Idaho Code, for compliance with applicable codes. Following this inspection, the school district will, within twenty (20) days, (1) correct any deficiencies specified in the inspection report or (2), if the corrective action involves structural modification, file a written plan with the inspecting agency for correction by the beginning of the following school year. (4-1-97)

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0303

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 33-1201, 33-1204, 33-1208, 33-1209, and 33-1254, 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 15, 2003.

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:

Removes the Code of Ethics as rule by reference and includes it in the administrative code. Revises the Code of Ethics to be more specific and add definitions.

FEE SUMMARY: There is no fee associated with this rule change.

NEGOTIATED RULEMAKING: A form of negotiated rulemaking was conducted. The Professional Standards Commission held a statewide hearing in June 2003, and also took written input on the proposed changes through posting on the Internet.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jimmi Sommer at 334-2270.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August 2003.

Randi McDermott
State Board of Education
650 W. State St.
PO Box 83720, Boise, ID 83720-0037
Phone: 208-334-2270 / Fax: 208-334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0303

071. -- 0795. (RESERVED).

076. CODE OF ETHICS FOR IDAHO PROFESSIONAL EDUCATORS (SECTIONS 33-1208 AND 33-1209, IDAHO CODE).

Believing in the worth and dignity of each human being, the professional educator recognizes the supreme

importance of pursuing truth, striving toward excellence, nurturing democratic citizenship and safeguarding the freedom to learn and to teach while guaranteeing equal educational opportunity for all. The professional educator accepts the responsibility to practice the profession according to the highest ethical principles. The Code of Ethics for Idaho Professional Educators symbolizes the commitment of all Idaho educators and provides principles by which to judge conduct. ()

01. Aspirations and Commitments. ()

a. The professional educator aspires to stimulate the spirit of inquiry in students and to provide opportunities in the school setting that will help them acquire viable knowledge, skills and understanding that will meet their needs now and in the future. ()

b. The professional educator provides an environment that is safe to the cognitive, physical and psychological well-being of students and provides opportunities for each student to move toward the realization of his/her potential as an effective citizen. ()

c. The professional educator, recognizing that students need role models, will act, speak and teach in such a manner as to exemplify nondiscriminatory behavior, and encourage respect for other's cultures and beliefs. ()

d. The professional educator is committed to the public good and will help preserve and promote the principles of democracy. He will provide input to the local school board to assist in the board's mission of developing and implementing sound educational policy. ()

e. The professional educator believes the quality of services rendered by the education profession directly influences the nation and its citizens. He strives, therefore, to establish and maintain professional principles, to improve educational practice, and to achieve conditions that attract highly qualified persons to the profession. ()

f. The professional educator regards the employment agreement as a pledge to be executed in a manner consistent with the highest ideals of professional service. He believes that sound professional personal relationships with governing boards are built upon integrity, dignity, and mutual respect. The professional educator encourages the practice of the profession only by qualified persons. ()

02. Principle I. A professional educator abides by all federal, state, and local laws and statutes. Unethical conduct may include the conviction of any felony or misdemeanor offense as defined by Section 18-110 and Section 18-111, Idaho Code. All infractions (traffic) as defined by Section 18-113A, Idaho Code, are excluded. ()

03. Principle II. A professional educator maintains a professional relationship with all students, both inside and outside the classroom. Unethical conduct includes, but is not limited to: ()

a. Committing any act of child abuse, including physical or emotional abuse; ()

b. Committing any act of cruelty to children or any act of child endangerment; ()

c. Committing or soliciting any sexual act from any minor or any student regardless of age; ()

d. Committing any act of harassment (e.g., sexual harassment) as defined by district policy; ()

e. Soliciting, encouraging, or consummating a romantic or inappropriate relationship (whether written, verbal, or physical) with a student, regardless of age; ()

f. Using inappropriate language including, but not limited to, swearing and improper sexual comments (e.g. sexual innuendoes or sexual idiomatic phrases); ()

g. Taking inappropriate pictures (digital, photographic, or video) of students; ()

- h.** Inappropriate contact with any minor or any student regardless of age using electronic media; and ()
- i.** Furnishing alcohol or illegal or unauthorized drugs to any student or allowing or encouraging a student to consume alcohol or unauthorized drugs except in a medical emergency. ()
- 04. Principle III.** A professional educator refrains from the abuse of alcohol or drugs during the course of professional practice. Unethical conduct includes, but is not limited to: ()
- a.** Being on school premises or at any school-sponsored activity, home or away, involving students while possessing, using or consuming illegal or unauthorized drugs; ()
- b.** Being on school premises or at any school-sponsored activity, home or away, involving students while possessing, using, or consuming alcohol; ()
- c.** Inappropriate or illegal use of prescription medications on school premises or at any school-sponsored events, home or away; and, ()
- d.** Inappropriate or illegal use of drugs or alcohol that impairs the individual's ability to function. ()
- e.** Possession of an illegal drug as defined in Chapter 27, Idaho Code, Uniform Controlled Substances. ()
- 05. Principle IV.** A professional educator exemplifies honesty and integrity in the course of professional practice. Unethical conduct includes, but is not limited to: ()
- a.** Fraudulently altering or preparing materials for licensure or employment; ()
- b.** Falsifying or deliberately misrepresenting professional qualifications, degrees, academic awards, and related employment history when applying for employment or licensure; ()
- c.** Failure to notify the state at the time of application for licensure of past revocations or suspensions of a certificate or license from another state; ()
- d.** Failure to notify the state of past criminal convictions at the time of application for licensure; ()
- e.** Falsifying, deliberately misrepresenting, or deliberately omitting information regarding the evaluation of students or personnel, including improper administration of any standardized tests (changing test answers, copying, or teaching identified test items, unauthorized reading of the test to students, etc.); ()
- f.** Falsifying, deliberately misrepresenting, or deliberately omitting reasons for absences or leaves; ()
- g.** Falsifying, deliberately misrepresenting, or deliberately omitting information submitted in the course of an official inquiry or investigation; and, ()
- h.** Falsifying, deliberately misrepresenting, or deliberately omitting material information on an official evaluation of colleagues. ()
- 06. Principle V.** A professional educator entrusted with public funds and property honors that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes, but is not limited to: ()
- a.** Misuse, or unauthorized use, of public or school-related funds or property; ()

- b.** Failure to account for funds collected from students or parents; ()
 - c.** Submission of fraudulent requests for reimbursement of expenses or for pay; ()
 - d.** Co-mingling of public or school-related funds in personal bank account(s); ()
 - e.** Use of school computers for a private business; ()
 - f.** Use of school computers to deliberately view or print pornography; and, ()
 - g.** Deliberate use of poor budgeting or accounting practices. ()
- 07. Principle VI.** A professional educator maintains integrity with students, colleagues, parents, patrons, or business personnel when accepting gifts, gratuities, favors, and additional compensation. Unethical conduct includes, but is not limited to: ()
- a.** Unauthorized solicitation of students or parents of students to purchase equipment or supplies from the educator who will directly benefit; ()
 - b.** Acceptance of gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest; ()
 - c.** Tutoring students assigned to the educator for remuneration unless approved by the local board of education; and, ()
 - d.** Soliciting, accepting or receiving a pecuniary benefit greater than fifty dollars (\$50) as defined in Section 18-1359(b), Idaho Code. ()
- 08. Principle VII.** A professional educator complies with state and federal laws and local school board policies relating to the confidentiality of student and employee records, unless disclosure is required or permitted by law. Unethical conduct includes, but is not limited to: ()
- a.** Sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status or income, and assessment or testing results with inappropriate individuals or entities; and ()
 - b.** Sharing of confidential information about colleagues obtained through employment practices with inappropriate individuals or entities. ()
- 09. Principle VIII.** A professional educator fulfills all terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract. Unethical conduct includes, but is not limited to: ()
- a.** Abandoning any contract for professional services without the prior written release from the contract by the employing school district or agency; ()
 - b.** Willfully refusing to perform the services required by a contract; and, ()
 - c.** Abandonment of classroom or failure to provide appropriate supervision of students at school or school-sponsored activities to ensure the safety and well-being of students. ()
- 10. Principle IX.** A professional educator reports breaches of the Code of Ethics for Idaho Professional Educators, and submits reports as required by Idaho Code. Unethical conduct includes, but is not limited to: ()
- a.** Failure to comply with Section 33-1208A, Idaho Code, (reporting requirements and immunity); ()

b. Failure to comply with Section 16-1619, Idaho Code, (reporting of child abuse, abandonment or neglect); and, ()

c. Having knowledge of a violation of the Code of Ethics for Idaho Professional Educators and failing to report the violation to an appropriate education official, ()

11. Principle X. A professional educator demonstrates conduct that follows generally recognized professional principles with the right to exercise academic freedom. Unethical conduct includes, but is not limited to: ()

a. Any conduct that seriously impairs the Certificate holder's ability to teach or perform his professional duties; ()

b. Conduct that is detrimental to the health, welfare, discipline, or morals of students; ()

c. Conduct which is offensive to the ordinary dignity, decency, and morality of others; ()

d. Failure to cooperate with the Professional Standards Commission in inquiries, investigations, or hearings; ()

e. Using institutional privileges for the promotion of political candidates or for political activities, except for local, state or national education association elections; and, ()

f. Deliberately falsifying information presented to students. ()

077. DEFINITIONS FOR USE WITH THE CODE OF ETHICS FOR IDAHO PROFESSIONAL EDUCATORS (SECTIONS 33-1208 AND 33-1209, IDAHO CODE).

01. Administrative Complaint. A document issued by the State Department of Education outlining the specific, purported violations of Section 33-1208, Idaho Code, or the Code of Ethics for Idaho Professional Educators. ()

02. Allegation. A purported violation of the Code of Ethics for Idaho Professional Educators or Idaho Code. ()

03. Complaint. A signed document defining the allegation that states the specific ground or grounds for revocation, suspension or issuance of a letter of reprimand (Section 33-1209(1), Idaho Code). The State Department of Education may initiate a complaint. ()

04. Conditional Certificate. Allows an educator to retain licensure under certain stated Certificate conditions as determined by the Professional Standards Commission (Section 33-1209(10), Idaho Code). ()

05. Contract. Any signed agreement between the school district and a certificated educator pursuant to Section 33-513(1), Idaho Code. ()

06. Conviction. Refers to all instances regarding a finding of guilt by a judge or jury; a plea of guilt by Nolo Contendere or Alford plea; or all proceedings in which a sentence has been suspended, deferred or withheld. ()

07. Educator. A person who holds or applies for an Idaho Certificate (Section 33-1001(16) and Section 33-1201, Idaho Code). ()

08. Executive Committee. A decision-making body comprised of members of the Professional Standards Commission, including the chair and vice-chair of the Commission. A prime duty of the Committee is to review purported violations of the Code of Ethics for Idaho Professional Educators to determine probable cause and direction for possible action to be taken against a Certificate holder. ()

09. Education Official. An individual identified by local school board policy, including, but not limited to, a superintendent, principal, assistant principal, or school resource officer (SRO). ()

10. Hearing. A formal review proceeding that ensures the respondent due process. The request for a hearing is initiated by the respondent and is conducted by a panel of peers. ()

11. Hearing Panel. A minimum of three (3) educators appointed by the chair of the Professional Standards Commission and charged with the responsibility to make a final determination regarding the charges specifically defined in the Administrative Complaint. ()

12. Investigation. The process of gathering factual information concerning a valid, written complaint in preparation for review by the Professional Standards Commission Executive Committee, or following review by the Executive Committee at the request of the deputy attorney general assigned to the Department of Education. ()

13. Certificate. A document issued by the Department of Education under the authority of the State Board of Education allowing a person to serve in any elementary or secondary school in the capacity of teacher, supervisor, administrator, education specialist, school nurse or school librarian (Section 33-1201, Idaho Code). ()

14. Certificate Denial. The refusal of the state to grant a certificate for an initial or reinstatement application. ()

15. Certificate Suspension. A time-certain invalidation of any Idaho certificate as determined by a stipulated agreement or a due process hearing panel as set forth in Section 33-1209, Idaho Code. ()

16. Minor. Any individual who is under eighteen (18) years of age. ()

17. Not-Sufficient Grounds. A determination by the Executive Committee that there is not-sufficient evidence to take action against an educator's certificate. ()

18. Principles. Guiding behaviors that reflect what is expected of professional educators in the state of Idaho while performing duties as educators in both the private and public sectors. ()

19. Reprimand. A written letter admonishing the Certificate holder for his conduct. The reprimand cautions that further unethical conduct may lead to consideration of a more severe action against the holder's Certificate. ()

20. Respondent. The legal term for the professional educator who is under investigation for a purported violation of the Code of Ethics for Idaho Professional Educators. ()

21. Revocation. The invalidation of any Certificate held by the educator. ()

22. Stipulated Agreement. A written agreement between the respondent and the Professional Standards Commission to resolve matters arising from an allegation of unethical conduct following a complaint or an investigation. The stipulated agreement is binding to both parties and is enforceable under its own terms, or by subsequent action by the Professional Standards Commission. ()

23. Student. Any individual enrolled in any Idaho public or private school from preschool through grade 12. ()

24. Sufficient Grounds. A determination by the Executive Committee that sufficient evidence exists to issue an Administrative Complaint. ()

078. -- 079. (RESERVED).

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0304

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 33-1201, 33-1203, and 33-1204, Idaho Code.

PUBLIC HEARING SCHEDULE: 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. Public hearing(s) concerning this rulemaking have been scheduled for the following date and locations: October 16, 2003 from 7:00 to 9:00 p.m (MST) by statewide video conference at the following locations:

Boise: East conference room, J.R. Williams Bldg. ("Hall of Mirrors", 700 W. State St.)

Coeur d'Alene: North Idaho College, Winton Hall, Room 22

Idaho Falls: Eastern Idaho Technical College, John. E. Christopherson Bldg., Room 371

Lewiston: Lewis-Clark State College, Sam Glenn Complex Room 50

Pocatello: Idaho State University, Library/Media Center B 06

Twin Falls: College of Southern Idaho, Sheilds Bldg., Room 209

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

Provides for alternative routes to certification for teachers needing an emergency endorsement, individuals highly qualified in subject matter but with limited experience in educational methodology, and for para-educators.

FEE SUMMARY: There is no fee associated with this rule change.

NEGOTIATED RULEMAKING: A form of negotiated rulemaking was conducted. The Teacher Preparation Task Force met approximately 18 times and the Idaho's MOST Advisory Group met approximately 24 times since November of 2000. As well, four public hearings concerning alternative routes to certification were held in December 2002, April 2003, May 2003 and July of 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jimmi Sommer at 334-2270.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Randi McDermott
State Board of Education
650 W. State St.
PO Box 83720
Boise, ID 83720-0037
Phone: 208-334-2270
Fax: 208-334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0304

031. -- 0398. (RESERVED).

039. LIMITED APPROVAL ALTERNATIVES (EXPIRES JULY 1, 2006).

01. Consultant Specialist Certificate. At the request of a school district, the State Department of Education may issue a Consultant Specialist certificate to highly and uniquely qualified persons. The use of the certificate is limited to the applicant's district and is valid for one (1) year. It is intended that use of the Consultant Specialist provision be exceptional and occasional and not used as a regular hiring practice. ()

02. Letters Of Authorization (LOA). Letters of Authorization allow Idaho school districts to request emergency certification when a professional position cannot be filled with someone who has the correct certificate. Individuals considered for an LOA must have at least a baccalaureate degree and must enroll in a program to achieve full certification in the area of authorization. A request for a Letter of Authorization shall be sent to the State Department of Education. The request and supporting information will be reviewed by the Professional Standards Commission, with the final recommendation of the Commission submitted by the State Superintendent of Public Instruction for State Board of Education approval. An LOA is valid for one (1) year and may renewed annually upon completion of nine (9) semester credit hours applicable to the standards for full certification in the area of authorization. ()

03. Limited Transitional Letter Of Approval. This non-renewable letter of approval is valid for one (1) year only. The purpose of the letter of approval is to allow a teacher with secondary certification (grades 6-12) to teach at the elementary levels (K-8) without additional student teaching, or vice versa. Other than student teaching, all other requirements for the desired certificate must be met. Upon successful completion of one (1) year of teaching while holding the Limited Transitional Letter of Approval, the educator will be eligible to hold the appropriate elementary or secondary certificate. To be eligible for a Limited Transitional Letter of Approval, the following requirements must be met: ()

a. Must hold a valid Idaho Elementary or Secondary Teaching Certificate. ()

b. Must provide verification of four (4) years of successful classroom teaching while holding the proper state certificate. ()

c. Must have completed all of the requirements for the Standard Elementary Certificate, except student teaching, if the applicant currently holds a Standard Secondary Certificate. If the applicant currently holds a Standard Elementary Certificate, all of the requirements for a Standard Secondary Certificate must have been completed, except student teaching. ()

d. Must provide the State Department of Education with written verification that a mentor teacher holding the same certificate as the one (1) the applicant is seeking will be provided for the applicant by the employing district; or be enrolled in a one (1) year supervised internship experience under the supervision of personnel from a college or university with an approved teacher preparation program. ()

04. Postsecondary Specialist. A Postsecondary Specialist Letter of Approval may be granted to teaching faculty of Idaho public postsecondary institutions, who are not otherwise certificated, upon recommendation by the postsecondary institution (dean level or above) to be eligible to teach in the public schools. It is intended that the letter of approval will be used primarily for distance education and "virtual university" programs. The Postsecondary Specialist Letter of Approval is valid for five (5) years and is renewable. ()

040. MISASSIGNMENTS - GRANDFATHERING (EXPIRES JULY 1, 2006).

01. Certificate. A person employed by a school district in a position requiring a certificate must hold a valid certificate for the service being rendered. In any situation in which a person not holding a specific endorsement is to provide educational services in a specific area, the employing district must apply to the State Department of

Education's ~~Certification Office~~ for misassigned status to place the individual in that assignment for the school year. The district must demonstrate in a written report that it has made a good faith effort to employ properly certificated educators for those duties and that a conscientious effort is being made to remedy each specific problem. Criteria for acceptance of the report includes the following: (4-1-97)()

- a. The duties may comprise no more than one-half (1/2) of the teacher's full time assignment; (4-1-97)
- b. Teachers who are misassigned must have a minimum of six (6) semester hours of college credit in each subject area in which service is rendered; and (4-1-97)
- c. Teachers who are misassigned must comprise no more than five percent (5%) of the total number of the district's certificated, full-time teachers, or five (5) teachers, whichever is greater. Districts which have secondary schools located more than fifteen (15) miles from another secondary school may misassign up to an additional five (5) teachers upon approval of the ~~Certification Office~~ State Department of Education. However, in no circumstance will more than five (5) teachers be misassigned in any one building. (4-1-97)()

~~02. Waiver. Districts may request a waiver of the misassignment policy, according to IDAPA 08.02.01, Section 001. The waiver request must include a rationale for the misassignment. (4-1-97)~~

~~03. Effect On Accreditation. All misassignments will be noted on the accreditation report. Any misassignments not meeting the above criteria may effect accreditation. Funds will be withheld for that portion of the misassigned person's time which exceeds the criteria included in this rule if a waiver has not been approved by the State Board of Education. (4-1-97)~~

~~04. Previous Exceptions. Any teacher authorized to teach under previous exceptions to the rules of the State Board of Education, based upon service or experience before September 1978, will continue to be authorized to teach as provided for under previous rule IDAPA 08.02.03, Subsection 180.06. (4-1-97)~~

041. ALTERNATIVE CERTIFICATION (EXPIRES JULY 1, 2006).

The purpose of this program is to provide an alternative for individuals to become certificated secondary teachers in Idaho without following a standard teacher education program. The purpose of this certification is to provide an alternative for individuals with strong subject matter background but limited experience with educational methodology. Qualified applicants will begin contracted teaching earlier and will be admitted to the program using criteria that are different from existing programs but more appropriate for the circumstances. This certification is valid for three (3) years and is non-renewable. To be eligible for alternative certification, the following requirements must be satisfied: ()

01. Initial Qualifications. Prior to application: The prospective candidate must possess a baccalaureate (or higher) degree from an accredited college or university with a minimum grade point average of 2.0 on a four point zero (4.0) scale completed at least five (5) years earlier. Additionally, an applicant must hold academic credits equivalent to current major and minor requirements for secondary endorsements; be assured of full-time employment in an Idaho school district; and meet all non-academic requirements of the state of Idaho. ()

02. Teacher Trainee Program. Alternative certification is valid for two (2) years of teaching. The teacher trainee program must be completed within three (3) calendar years from the date of admission to the program. It authorizes the teacher trainee to teach only the subject(s) listed on the letter of approval and only at the secondary level. ()

a. A teacher trainee will work toward completion of the teacher trainee program through participating colleges and universities, the State Department of Education, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized two-year teacher trainee program as one of the conditions to receive recommendation for the Standard Secondary Teaching Certificate. A formal teacher trainee plan will be developed by a consortium composed of the mentor teacher, a representative from the school district, a representative of the State Department of Education, and a representative of the participating higher education institution with an approved secondary education program. Any deviation from the formal trainee plan must be approved by the consortium. The consortium will be responsible for the program design, supervision, and evaluation

of the training. The teacher trainee program shall include: ()

i. Prior to entering the classroom, completion of nine (9) semester credit hours of pre-service training from an institution of higher education in educational course work pertinent to the education profession. ()

ii. Prior to completion of the Alternate Route Program, at least one (1) course in each of the following areas must be completed: Philosophical Foundations of Education; Psychological Foundations of Education; Methodology; Reading in the Content Area. ()

iii. Completion of a thirty (30) hour, pre-service orientation presented by the school district prior to a classroom assignment. This orientation shall include district policies, procedures, curriculum, instructional model, community characteristics, and resources. ()

iv. Completion of a four semester college/university internship. The trainee shall be enrolled in three (3) semester credit hours of internship each semester. ()

v. Completion of a six to nine (6-9) semester credit hour program during the second summer from an institution of higher learning. The pre-service and second summer program of fifteen to eighteen (15-18) semester credit hours in total shall include: philosophical, psychological, and methodological foundations of the profession, and reading in the content area. The consortium will determine the content required for the trainee, which may include both pedagogical and subject area course work. When designing the content necessary for the individual teacher trainee to complete the program, the consortium shall consider previous college credit as documented in official transcripts. Efforts will be directed to provide observation and clinical experiences during the time prior to being assigned to the classroom. ()

b. Assistance by Mentor Teachers: Each teacher trainee must be assisted by and guided throughout the two-year training period by a certificated employee of the district who has been designated as a mentor teacher. Principals must ensure that teacher trainees are provided with direct assistance, which should include close clinical supervision, especially at the beginning of the internship. ()

c. Performance Evaluations: In order to receive a consortium recommendation for the Standard Secondary Teaching Certificate, the teacher trainee must complete at least two (2) years of successful performance as a teacher under the teacher trainee program. Principals are to provide assistance to teacher trainees regarding the purpose, expectations, and procedures involved in the evaluation process and with whatever guidance may be needed. The principal shall formally evaluate the teacher trainee at least once each semester of the school year. For purposes of suspension or dismissal, teacher trainees are to be treated as non-continuing contract employees. The district may suspend or dismiss teacher trainees in accordance with the procedures as provided in Idaho Code. The Teacher Trainee Letter of Approval may be suspended or revoked if there is failure to satisfactorily and successfully complete the stages of the individualized plan within the specified time frames as established by the consortium; or failure to obtain at least a two point five (2.5) grade point average on a four point zero (4.0) scale in the college credit portion of the program. Also, no individual grade can be lower than a "C"; or any other causes for suspension or revocation as found in Section 33-1208, Idaho Code. ()

d. The teacher trainee, upon successful completion of the teacher trainee program as verified by the consortium, will be eligible to apply for a Standard Secondary Teaching Certificate. The two (2) years of experience as a teacher trainee shall be counted toward continuing contract status as authorized in Section 33-515, Idaho Code. ()

042. ALTERNATE ROUTES TO CERTIFICATION (EFFECTIVE JULY 1, 2006).

The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard teacher education program. Individuals who are currently employed as Para-Educators, individuals who are currently certificated to teach but who are in need of emergency certification in another area, and individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. ()

043. ALTERNATIVE AUTHORIZATION – TEACHER TO NEW CERTIFICATION (EFFECTIVE JULY 1, 2006).

The purpose of this alternative authorization is to allow Idaho school districts to request emergency endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification. Alternative authorization in this area is valid for three (3) years and is nonrenewable. ()

01. Initial Qualifications. Prior to application, a candidate must hold a Bachelor's degree, and a valid Idaho teacher certificate without full endorsement in content area of need. The school district must declare an emergency and provide supportive information attesting to the ability of the candidate to fill the position. ()

02. Alternative Route Preparation Program. ()

a. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. Candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. ()

b. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. ()

c. Candidate shall meet all requirements for the endorsement/certificate as provided herein. ()

044. ALTERNATIVE AUTHORIZATION – CONTENT SPECIALIST (EFFECTIVE JULY 1, 2006).

The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. Alternative authorization in this area is valid for three (3) years and is not renewable. ()

01. Initial Qualifications. ()

a. Prior to application, a candidate must hold a Bachelor's degree. ()

b. The candidate must be identified for employment by an Idaho school district. The candidate must remain employed by the district while in the alternative route preparation program. ()

c. The candidate shall meet enrollment qualifications of the college/university offering the alternative route preparation program. ()

d. Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. ()

02. Alternative Route Preparation Program. ()

a. A consortium comprised of a designee from the college/university to be attended, and a representative from the school district, and the candidate shall determine preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. ()

b. Prior to entering the classroom, the candidate completes eight (8) to sixteen (16) weeks of accelerated study in education pedagogy. ()

c. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one of the conditions to receive a recommendation for full certification. ()

d. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences. ()

045. PARA-EDUCATOR TO TEACHER (EFFECTIVE JULY 1, 2006).

The purpose of this alternative route to certification is to encourage qualified para-educators employed in Idaho classrooms to become certificated teachers. ()

01. Initial Qualifications. Prior to application: the candidate must hold an AA/AAS degree, meet state para-educator standards, and be employed as a para-educator. Districts shall identify potential candidate with appropriate dispositions for teaching, and continue to employ candidate as para-educators. District/school provides orientation for candidate as deemed appropriate. ()

02. Alternative Route Preparation Program. Alternative certification is valid for two (2) years of teaching. The alternative route preparation program must be completed within three (3) calendar years from the date of admission to the program. ()

a. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one of the conditions to receive a recommendation for full certification. ()

b. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. ()

c. Candidate shall complete all requirements for certification as provided herein. ()

046. -- 049. (RESERVED).

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 33-105(1) and 33-107(3), 33-116, 33-118, and 33-1612, Idaho Code and Article IX, Section 2 of the Idaho Constitution.

PUBLIC HEARING SCHEDULE: 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. Public hearing(s) concerning this rulemaking have been scheduled for the following date and locations: October 16 from 7-9 p.m (MST) by statewide videoconference at the following locations:

Boise: East conference room, J.R. Williams Bldg. ("Hall of Mirrors", 700 W. State St.)

Coeur d'Alene: North Idaho College, Winton Hall Room 22

Idaho Falls: Eastern Idaho Technical College, John. E. Christopherson Bldg., Room 371

Lewiston: Lewis-Clark State College, Sam Glenn Complex Room 50

Pocatello: Idaho State University, Library/Media Center B 06

Twin Falls: College of Southern Idaho, Sheilds Bldg., Room 209

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Includes proficiency on the ISAT as an additional requirement for high school graduation, provided that a student who has not attained proficiency by graduation may appeal to his/her local school district and be given an opportunity to meet the standards through some other locally established, State Board of Education approved mechanism, beginning with the class of 2006. Requires that the ISAT include sections for both selected and constructed responses. Requires that all Limited English Proficient students, regardless of the number of years he/she has been speaking English, and outlines provisions for adaptations and accommodations for that population. Establishes that students will take the ISAT in spring of their 10th grade year and can retake portions of the test not passed. Remaining components of the Accountability section are those aspects that were submitted to the U.S. Department of Education in the Consolidated State Application Accountability Workbook to meet federal guidelines.

FEE SUMMARY: There is no fee associated with this rule change.

NEGOTIATED RULEMAKING: A form of negotiated rulemaking was conducted. The Accountability Commission held approximately six public meetings to develop these proposed rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Carissa Miller at 334-2270.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Randi McDermott
State Board of Education
650 W. State St.
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Phone: 208-334-2270
Fax: 208-334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0301

105. GRADUATION FROM HIGH SCHOOL.

Graduation from an Idaho high school requires that: (4-1-97)

01. Credit Requirements. All students will demonstrate achievement in the CORE and other required subjects to include forty-two (42) semester credits, one (1) semester equaling one-half (1/2) year. (4-5-00)

02. Achievement Standards. All students will meet locally established subject area achievement standards (using state standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-30-01)

03. Proficiency (Effective January 1, 2006). All students must achieve a proficient or advanced score on the High School Idaho Standards Achievement Test in order to graduate. A student who does not attain at least a proficient score prior to graduation may appeal to the local school board, and, at the discretion of the local school board, may be given an opportunity to demonstrate proficiency of the achievement standards through some other locally established mechanism. All locally established mechanisms used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. ()

034. Foreign Exchange Students. Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the ~~Board of Trustees~~ local school board. (4-5-00)()

106. (RESERVED).

107. HIGH SCHOOL GRADUATION STANDARDS (EFFECTIVE JULY 1, 2000).

The State minimum graduation requirement for all Idaho public high schools is forty-two (42) semester credits and a proficient or advanced score on the High School Idaho Standards Achievement Test. The core of instruction required by the State Board of Education is twenty-five (25) semester credits. Local school districts may establish graduation requirements beyond the state minimum. The local school district has the responsibility to provide education opportunities that meet the needs of students in both academic and vocational areas. It is the intent of the State Board of Education to give local school districts the flexibility to provide rigorous and challenging curriculum that is consistent with the needs of students and the desire of their local patrons. (3-15-02)()

01. Secondary Language Arts And Communication. (Nine (9) credits required with instruction in communications including oral communication and technological applications). Includes four (4) years of instruction in English, each year will consist of language study, composition, and literature. A course in speech or a course in debate will fulfill one (1) credit of the nine (9) credit requirement. (7-1-00)

02. Mathematics And Science. (Eight (8) credits required) a minimum of four (4) credits in math and four (4) credits in science, two (2) of which will be laboratory sciences. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. Secondary sciences will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (7-1-00)

03. Social Studies. (Five (5) credits required), including government (two (2) credits), U.S. history (two (2) credits), and economics (one (1) credit). Current world affairs and geography will be integrated into all social studies instruction. Courses such as geography, sociology, world affairs and world history may be offered as electives, not to be counted as a social studies requirement. (7-1-00)

04. Humanities. (Two (2) credits required). A course in interdisciplinary humanities, visual and performing arts, or foreign language. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course syllabus is approved by the State Department of Education as being aligned with the Humanities Standards. (5-3-03)

- 05. Health/Wellness.** (One (1) credit required). A course focusing on positive health habits. (7-1-00)
- 06. Assessment.** A proficient or advanced score on the High School Idaho Standards Achievement Test. ()

(BREAK IN CONTINUITY OF SECTIONS)

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. A statewide student assessment program consisting of standardized achievement testing and performance appraisal activities in the fundamental basic skills will be conducted annually. The State Board of Education will provide oversight for all components of the comprehensive assessment program. The State Department of Education will be responsible for the administration of assessment efforts as provided for by the State Board of Education. (3-15-02)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-02)
- a.** Measure and improve student achievement; (3-15-02)
 - b.** Assist classroom teachers in designing lessons; (3-15-02)
 - c.** Identify areas needing intervention and remediation, and acceleration; (3-15-02)
 - d.** Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)
 - e.** Inform parents and guardians of their child's progress; (3-15-02)
 - f.** Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)
 - g.** Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)
 - h.** Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the Direct Writing Assessment (DWA), the Direct Mathematics Assessment (DMA), the National Assessment of Educational Progress (NAEP), and the Idaho Standards Achievement Tests (ISAT). The ISAT will include two (2) components: a selected response section and a constructed response section. (~~5-3-03~~)()

04. Testing Population. All students in Idaho public schools, grades kindergarten through twelve (K-12Q), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. All students who are eligible for special education shall participate in the statewide assessment program. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. English Language Learners (ELL) Limited English Proficient (LEP) students who have been in an English speaking school for less than one (1) year and score a

1 or 2 on the Pre-LAS or LAS, or a 1 or 2 on the Woodcock-Munoz, or an A or B on IPT, or limited or intermediate on the Macualitas may be excluded from testing. If the student does not have a local language score they are not excluded from testing receive a score in the low range on the state approved language acquisition test and have an Education Learning Plan (ELP) shall be given the ISAT with accommodations or adaptations. LEP students who do not have an ELP or a language acquisition score will be given the regular ISAT without accommodations or adaptations. (5-3-03)(____)

05. Scoring And Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (5-3-03)

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.07.a. through 111.07.m. Each assessment will be comprehensive of and aligned to the Idaho State Achievement Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in social studies, science, health and humanities. (5-3-03)

a. Kindergarten - Idaho Reading Indicator. (3-15-02)

b. Grade 1 - Idaho Reading Indicator. (3-15-02)

c. Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

e. Grade 4 - Direct Math Assessment, National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

f. Grade 5 - Direct Writing Assessment, Grade 5 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

g. Grade 6 - Direct Math Assessment, Grade 6 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

h. Grade 7 - Direct Writing Assessment, Grade 7 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

i. Grade 8 - Direct Math Assessment, National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

j. Grade 9 - Direct Writing Assessment, Grade 9 Idaho Standards Achievement Test covering Language Arts/Communication and Math Standards. (5-3-03)

k. Grade 10 - High School Idaho Standards Achievement Test covering Language Arts/Communications and Math Standards*. (5-3-03)

~~**l.** Grade 11 - High School Idaho Standards Achievement Test*. (5-3-03)~~

~~**m.** Grade 12 - High School Idaho Standards Achievement Test*. (5-3-03)~~

~~**n.** *Students who do not receive a proficient score on a portion or portions of the High School Idaho Standards Achievement Test will retake the appropriate portion or portions each time thereafter that it is offered.~~

Once a student achieves proficiency, at a level established by the State Board of Education, on a portion or portions of the assessment, regardless of which grade level, ten through twelve (10-12), that student is not required to continue taking that portion or portions achieve a proficient or advanced score on a portion or portions of the ISAT offered in the Spring of their tenth grade year or later are not required to continue taking that portion or portions.

~~(5-3-03)~~()

- 07. Comprehensive Assessment Program Schedule.** (5-3-03)
- a.** The Idaho Reading Indicator will be administered in accordance with Section 33-1614, Idaho Code. (3-15-02)
- b.** The Direct Math Assessment and the Direct Writing Assessment will be administered in December in a time period specified by the State Department of Education. (3-15-02)
- c.** The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)
- d.** The Idaho Standards Achievement Tests will be administered twice annually in the Fall and Spring in a time period specified by the State Board of Education. (5-3-03)
- 08. Costs Paid By The State.** Costs for the following testing activities will be paid by the state: (4-1-97)
- a.** All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)
- b.** Statewide distribution of all assessment materials; (3-15-02)
- c.** Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program; and (3-15-02)
- d.** Implementation, processing, scoring and distribution of prescribed reports for the Direct Writing Assessment and the Direct Mathematics Assessment. (3-15-02)
- 09. Costs Of Additional Services.** Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)
- 10. Services.** The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements. (3-15-02)
- 11. Test Security, Validity And Reliability.** Test security is of the utmost importance. School districts will employ the same security measures in protecting statewide assessment materials from compromise as they use to safeguard other formal assessments. ~~(3-15-02)~~()
- a.** All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window. ()
- b.** The ISAT will be refreshed each year to provide additional security beginning with grades four (4) eight (8) and ten (10) in 2007. Items will be refreshed for grades three (3) and seven (7) in 2008; grades five (5) and six (6) in 2009; and grades two (2) and nine (9) in 2010. ()
- c.** Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Achievement Standards. ()
- 12. Demographic Information.** Demographic information will be required to assist in interpreting test

results. It may include but not be limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (5-3-03)

13. Dual Enrollment. For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-02)

a. The Idaho Standards Achievement Tests (grades 2-9 and High School). (5-3-03)

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.14.c.i. through 111.14.c.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (3-15-02)

i. Language Arts/Communications. (3-15-02)

ii. Math. (3-15-02)

iii. Science. (3-15-02)

iv. Social Studies. (3-15-02)

v. Health. (3-15-02)

vi. Humanities. (3-15-02)

SECTION 112 HAS BEEN MOVED TO SECTION 128

112. ACCOUNTABILITY.

The provisions in this section apply for the purposes of meeting the “No Child Left Behind” Act and the state of Idaho accountability requirements. ()

01. Student Achievement Levels. There are four (4) levels of student achievement for the ISAT. ()

a. Advanced: Exceeds Standards. The student demonstrates thorough knowledge and mastery of skills that allows him/her to function independently above his current educational level. ()

i. The student demonstrates a comprehensive understanding of all relevant information. ()

ii. The student demonstrates comprehension and understanding of knowledge and skills above his/her grade level. ()

iii. The student can perform skills or processes independently without significant errors. ()

b. Proficient: Meets Standards. The student demonstrates mastery of knowledge and skills that allow him/her to function independently on all major concepts and skills at his/her educational level. ()

i. The student demonstrates a comprehensive understanding of all information relevant to the topic, at level. ()

ii. The student can perform skills or processes independently without significant errors. ()

c. Basic: Below Standards. The student demonstrates basic knowledge and skills usage but cannot operate independently on concepts and skills at his/her educational level. Requires remediation and assistance to

complete tasks without significant errors. ()

i. The student has an incomplete knowledge of the topic or misconceptions about some information. ()

ii. The student requires assistance and coaching to complete tasks without errors. ()

d. Below Basic: Critically Below Standards. The student demonstrates significant lack of skills and knowledge and is unable to complete basic skills or knowledge sets without significant remediation. ()

i. The student has critical deficiencies of relevant knowledge of topic or misconceptions about some information. ()

ii. The student cannot complete any skill set without significant assistance and coaching. ()

02. Adequate Yearly Progress (AYP). ()

a. Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. ()

b. The State Department of Education will make AYP determinations for schools and districts each year. Results will be given to the districts no later than one (1) month prior to the first day of school. ()

c. The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. ()

03. Adequate Yearly Progress (AYP) Definitions. For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. ()

a. Full Academic Year (continuous enrollment). ()

i. A student who is enrolled continuously in the same public school from the end of the second school month through the Spring testing administration period will be included in the calculation to determine if the school achieved AYP. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. Students who are expelled but return to another school in the same district are considered continuously enrolled to determine the district AYP. ()

ii. A student who is enrolled continuously in the school district from the end of the second school month through the spring testing administration period will be included when determining if the school district has achieved AYP. ()

iii. A student who is enrolled continuously in a public school within Idaho from the end of the second school month through the spring testing administration period will be included when determining if the state has achieved AYP. ()

b. Participation Rate. ()

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. ()

ii. Schools with populations less than thirty-four (34) students must test the number of students outlined in the table.

<u>No.</u>	<u>Permitted Absences</u>	<u>No. Tested</u>	<u>% Tested</u>
33	2	31	94%
32	2	30	94%
31	2	29	94%
30	2	28	93%
29	2	27	93%
28	2	26	93%
27	2	25	93%
26	2	24	92%
25	2	23	92%
24	2	22	92%
23	2	21	91%
22	2	20	91%
21	2	19	90%
20	2	18	90%
19	2	17	89%
18	2	16	89%
17	2	15	88%
16	2	14	88%
15	2	13	87%
14	2	12	86%
13	2	11	85%
12	1	11	92%
11	1	10	91%
10	1	9	90%
9	1	8	89%
8	1	7	88%
7	1	6	86%
6	0	6	100%
5	0	5	100%
4	0	4	100%
3	0	3	100%
2	0	2	100%
1	0	1	100%

- ()
- c. Schools.** ()
- i.** An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. ()
- ii.** A middle school is a school that does not meet the definition of an elementary school and contains grade 8 but does not contain grade twelve (12). ()
- iii.** A high school is any school that contains grade twelve (12). ()
- iv.** The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. ()
- d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups:** ()
- i.** Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. ()
- ii.** Economically disadvantaged - identified through the free and reduced lunch program. ()
- iii.** Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). ()
- iv.** Limited English Proficient - individuals whose native language is a language other than English; individuals who come from environments where a language other than English is dominant; individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. ()
- e.** Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must maintain or make progress toward the target each year. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the "safe harbor" is invoked by the school/district. By 2014, the schools/districts must meet the target. ()
- f.** Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the "safe harbor" is invoked by the school/district. By 2014, the schools/districts must meet the target. ()

113. REWARDS.

- 01. Exemplary Status.** Exemplary Status is issued to a public school when the measure of the school's student and school performance and progress exceeds the proficient level performance on the baseline adopted by the Board. ()
- 02. Distinguished Schools.** The State Board of Education may identify Title I schools that exceed the Idaho performance standards as Distinguished Schools. ()
- 03. Additional Yearly Growth (AYG).** Schools and districts who improve proficiency levels of subpopulations or in the aggregate by greater than ten percent (10%) would be considered to have achieved AYG. Given that the school/district has met AYP, AYG would designate the school/district for a reward. ()

114. FAILURE TO MEET ADEQUATE YEARLY PROGRESS (AYP).

The State Department of Education shall develop procedures for a Technical Assistance Plan, School Improvement, School Choice, Supplemental Education Services, Corrective Action, and an Alternate Governance Plan for approval by the State Board of Education. ()

01. Technical Assistance Plan. Schools and districts that fail to achieve AYP for two (2) consecutive years will be provided with technical assistance from the State Department of Education. ()

02. School Improvement. Schools and districts that fail to achieve AYP for two (2) consecutive years must be placed on School Improvement, develop an improvement plan and offer school choice the following year. ()

03. School Choice. Schools and districts that fail to achieve AYP for two (2) consecutive years must inform all parents of the School Improvement Status and offer students the option to choose another school. This is at the expense of the school/district that did not meet AYP. ()

04. Supplemental Education Services In Reading And Math. Schools/Districts that fail to meet AYP for three (3) consecutive years must offer school choice and supplemental services in reading and math. ()

05. Corrective Action. Schools/Districts that fail to meet AYP for four (4) consecutive years must be placed on corrective action. ()

06. Alternate Governance Plan. Schools/Districts that fail to meet AYP for five (5) consecutive years may become governed by the State. ()

07. "Safe Harbor" Provision. If any subgroup(s) does not meet or exceed Idaho baseline (see Section 112), the public school or district may be considered to have achieved AYP if any one (1) of the following conditions are met: ()

a. The subgroup(s) that did not meet or exceed Idaho's baseline reduces by ten percent (10%) the percentage of nonproficient students, and the school/district as a whole achieves the state baseline for proficiency for the additional academic indicator. ()

b. The subgroup(s) that did not meet or exceed Idaho's baseline for the additional academic indicator maintains or makes progress towards the baseline for the additional academic indicator or graduation rate. ()

08. Appeals Process. ()

a. The State Department of Education determines preliminary identification of all schools and districts that have not met AYP according to the state criteria. ()

b. Within thirty (30) days of preliminary identification, the agency (district/school) reviews its data and may challenge its identification. The agency (district/school) not meeting AYP may appeal its status and provide evidence to support the challenge to the State Department of Education. ()

c. No later than thirty (30) days after preliminary identification, the identifying agency reviews the appeal and makes a final determination of identification for school improvement. ()

115. DATA COLLECTION.

The State Department of Education will collect the required information from participating school files for state and federal reporting and decision-making. The enrollment collection will contain information about the enrollment of the student attributes such as active special education, Limited English Proficient (LEP), migrant, grade level, gender, race, and free/reduced lunch status. The collection will be done in mid-October, early February, and May (end of the testing window). Each participating school is required to verify the data submitted in the files to assure accuracy. ()

116. -- 127. (RESERVED).

~~128.~~ CURRICULAR MATERIALS SELECTION (SECTIONS 33-118; 33-118A, IDAHO CODE).

The State Board of Education will appoint a committee to select curriculum materials. Committee appointments will be for a period of five (5) years. ~~Committee appointments will be for a period of five (5) years.~~ The membership of the committee will include one (1) representative from each of the state's institutions of higher education (Boise State University, Idaho State University, Lewis-Clark State College, and University of Idaho); two (2) Idaho public school administrators; two (2) Idaho public school elementary classroom teachers; two (2) Idaho public school secondary classroom teachers; one (1) person who is not a public school educator nor a public school trustee, one (1) person (parent, teacher, or administrator) representing Idaho's private/parochial schools, who will not be a public school educator or trustee; one (1) public school trustee; three (3) parents and one (1) curriculum consultant from the Division of Instruction of the State Department of Education and one (1) from the Division of Vocational Education whose appointment will be for one (1) year. The Executive Secretary will be an employee of the State Department of Education and will be a voting member of the committee. (4-1-97)(_____)

01. Subject Areas. Curricular materials are adopted by the State Board of Education for a period of five (5) years in the following subject areas: reading, English, spelling, speech, journalism, languages other than English, art, drama, social studies, music, mathematics, business education, career education and counseling, vocational/technical education, science, health, handwriting, literature, driver education. (4-5-00)

02. Multiple Adoptions Are Made In Each Subject Area. (4-5-00)

03. Bids. Each publisher must deliver, according to the committee schedule, a sealed bid on all curricular materials presented for adoption. (4-5-00)

04. Depository. The State Board will appoint a depository for the state-adopted curricular materials. Resource materials are a local option. (4-5-00)

05. Local Polices. School districts will follow their own policies for adoption in subject areas offered by a school district for which materials are not covered by the state curriculum materials committee. (4-5-00)

~~113. — 119.~~ (RESERVED).

~~120.~~ COMMUNICATION.

01. Communication Skills Emphasis. Communication skills enabling students to be responsible citizens of their homes, schools and communities will be emphasized throughout the curriculum. The teaching and demonstrating of effective communication skills will be exemplified throughout the kindergarten through twelve (K-12) system. (4-1-97)

02. Age-Appropriate Classroom, School, And Community Activities. Each year, age-appropriate classroom, school and community activities will be provided to all students for the purpose of developing written and oral communication skills with individuals and groups. Good listening skills are a critical component of the communication process. (Section 33-1612, Idaho Code) (4-1-97)

~~121. — 129.~~ (RESERVED).

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.01 - RULES GOVERNING HORSE RACING

DOCKET NO. 11-0401-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 17, 2003.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

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

Adopt Standard Time Trial rules of American Quarter Horse Association.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Adopting the rules brings the Idaho State Racing Commission in line with the national industry in regards to the time trials for racing.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted from April 15, 2003 through June 17, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. "Jack" Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 13th day of August, 2003.

Eugene O. "Jack" Baker
Executive Director
Idaho State Racing Commission
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0401-0301

130. STAKE RACES.

01. Applications. Stake race nomination applications must be submitted to the Racing Commission for approval. Rules adopted by the Commission supersede conditions of the race. (7-1-93)

02. Sold. If a nominee is sold, the entry goes with the foal and fees may be kept up by the buyer. There will be no refunds. If a nominee dies, the entry fees remain in the race. (7-1-93)

03. Weights. Weights, or the method of selection of weights, shall be listed on the nomination application. (7-1-93)

04. Disqualified. If any part of an entry is disqualified, all of the entry may be disqualified. (7-1-93)

05. Trainer. Separately owned horses trained by the same Trainer may be uncoupled in stake races for the purpose of pari-mutuel wagering; horses owned wholly or partly by one (1) racing interest must be coupled as an entry in the wagering. (7-1-93)

06. Licensee. A licensee reserves the right, with the consent of the Racing Commission, to cancel or postpone a race. (7-1-93)

07. No Liability. No liability will be incurred beyond the refund of nomination and starting fees if a stall gate fails to open and money wagered on a horse is refunded to the public (except if the horse is part of Entry or Field) such horse will be declared a nonstarter. (7-1-93)

08. Purse. Stake nomination applications must indicate the purse added by the track, if any. (7-1-93)

09. Fees. Nomination and entry fees must be deposited in a savings account approved by the Commission. (7-1-93)

10. List. A list of all horse remaining eligible shall be sent to the Commission and each nominator to the stake no later than fourteen (14) days after the closing of each payment. (7-1-93)

11. Interest. Accrued interest shall be added to the stake. (7-1-93)

12. No Deductions. No deductions shall be withheld from the purse unless so stated on the nomination application. (7-1-93)

13. Deposits. All monies and accrued interest shall be deposited with the Horseman's Bookkeeper prior to the day of entry. (7-1-93)

14. Awards. Breeders awards shall be paid on Association purse money. (7-1-93)

15. Race Off. If a stake race is declared off, all subscriptions and fees and accrued interest paid in connection with that race shall be refunded. Incurred administration expense may be deducted, subject to review by the Commission. (7-1-93)

16. Time Trials. *Each trial shall consist of not more than the number of horses specified on the conditions. Horses shall be selected from the trials to participate in one (1) or more divisions. These horses shall be selected on a time basis with the exception of stake races, which specify the final gate to be selected on best order of finish in trials. Times of horses in separate trials will be determined only to the limitation of the electric time one-hundredth of a second. Horses in the same trial heat will not be limited to the one-hundredth of a second time factor if they can be separated further by the Board of Stewards. If a tie exists, the entities involved shall draw lots to determine which shall participate in the finals. If a second division is to be run, the horses involved in the tie and the next best order of finish shall determine the horses which shall participate in the second division, etc. No adjustment will be made in recorded time of trials for head wind, tail wind, off track, etc. Should a mechanical failure occur within the electric timer on any time trial, finalists will then be selected by official hand timing with stop watches*

~~operated by three (3) official, reputable and disinterested persons. If in the trials should a horse be disqualified, it will be given the time of the horse it is immediately place behind, plus one hundredth of one (1) second. The decision of the Stewards in all matters shall be final and entries are accepted only on the condition that those persons nominating and/or starting a horse in the trials and/or stake agree to abide by their decision. (7-1-93)(5-20-03)T~~

a. Except in cases where the starting gate physically restricts the number of horses starting, each time trial shall consist of no more than ten (10) horses. (5-20-03)T

b. The time trials shall be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten (10) fastest times shall qualify to participate in the finals. If the time trials are conducted on two (2) days, the horses with the five (5) fastest times on the first day and the horses with the five (5) fastest times on the second day shall qualify to participate in the finals. When time trials are conducted on two (2) days, the racing secretary shall split owners with more than one (1) entry into separate days. (5-20-03)T

c. If the association's starting gate has less than ten (10) stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate post positions. (5-20-03)T

d. If only eleven (11) or twelve (12) horses are entered to run in time trials from a gate with twelve (12) or more stalls, the association may choose to run finals only. If eleven (11) or twelve (12) horses participate in the finals, only the first ten (10) finishers will receive purse money. (5-20-03)T

e. In the time trials, horses shall qualify on the basis of time and order of finish. The times of the horses in the time trial will be determined to the limit of the timer. The only exception is when two (2) or more horses have the same time in the same trial heat. Then the order of finish shall also determine the preference in qualifying for the finals. Should two (2) or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position(s), then a draw by public lot shall be conducted as directed by the stewards. Qualifying times in separate trials shall not be determined beyond the limit of the timer by comparing and/or enlarging photo-finish images. (5-20-03)T

f. Except in the case of disqualification, under no circumstances shall a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial. (5-20-03)T

g. Should a horse be disqualified for interference during the running of a time trial, it shall receive the time of the horse it is immediately placed behind plus one hundredth (.01) of a second, or the maximum accuracy of the electronic timing device. No adjustments will be made in the times recorded in the time trials to account for head-wind, tail-wind, off-track, etc. If a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse shall be given no time plus one hundredth (.01) of a second, or the maximum accuracy of the electronic timing device. (5-20-03)T

h. Should a malfunction occur with electronic timer on any time trial, finalists from that time trial will then be determined by official hand times operated by three (3) official and disinterested persons. The average of the three (3) hand times will be utilized for the winning time, unless one (1) of the hand times is clearly incorrect. In such cases, the average of the two (2) accurate hand times will be utilized for the winning time. Other horses shall be given times according to the order and margins of finish with the aid of the photo-finish, if available. (5-20-03)T

i. When there is a malfunction of the timer in some time trials, but the timer operates correctly in other time trials, the accurate electronic times shall not be discarded, nor shall the average of the hand times be used for all time trials. (5-20-03)T

j. If the accuracy of the electronic timer and/or the average of the hand times are questioned, the video of a time trial may be used by the stewards to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. When the timer malfunctions and there are no hand times, the stewards may select qualifiers based on the video. (5-20-03)T

k. Should there be a malfunction of the starting gate, and one (1) or more stall doors not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses with malfunctioning stall doors non-starters, or may allow any horse whose stall door opened late, but still ran a time fast enough to

qualify to be declared a starter for qualifying purposes. If a horse breaks through the stall door, or the stall door opens prior to the exact moment the starter purposely dispatches the field, the horse must be declared a non-starter, and all entry fees refunded. If one (1) or more, but not all stall doors, open at the exact moment the starter purposely dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic time. If the electronic timer malfunctions in this instance, the average of the hand times, or if not available, the video may be utilized for the horses declared starters. (5-20-03)T

l. If a horse should be scratched from the time trials, the horse's owner shall not be eligible for a refund of the fees paid and shall not be allowed to enter the final. If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test or a rule violation, the horse shall be deemed to have earned and the owner will receive, last place purse money. If more than one (1) horse is scratched from the final, then those purse monies shall be added together and divided equally among those owners. (5-20-03)T

m. If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the non-qualifier with the next fastest time shall replace the disqualified horse. If a qualifier is disqualified after entry for the final or consolation for ineligibility or a rule violation in the time trials, the purse shall be redistributed, and the non-qualifier with the next fastest time shall receive last place purse money. (5-20-03)T

17. Selection. There shall be no more than four (4) also eligibles selected when one (1) division of a stake is to be run. Horses cannot be advanced after the regular advertised scratch time. (7-1-93)

18. Also Eligible List. When two (2) or more divisions of the same stake are to be run, there will be no "also eligible list" in any of the two (2) or more divisions and if a horse should scratch, the owner will receive last place purse money in that particular division for which the horse qualified. If more than one (1) horse should scratch out of the same division, than those monies shall be added together and divided equally among those scratching out of that division. (7-1-93)

19. Number Of Starters. The race is limited to the number of starters as specified in the conditions. However, in the event more than the specified number of entries are received, winners of a sweepstakes have first preference, winners have second preference, stake placed maidens have third preference, other maidens have fourth preference, non-starters have fifth preference. (7-1-93)

20. Preference. An owner entering two (2) or more maidens must declare a preference for the draw for a post position in the gate. (7-1-93)

21. Fee. Any horses drawing outside the gate will have the entry fee refunded. (7-1-93)

22. Assistant Starter. In all stake races and trials there shall be at least one (1) assistant starter for each horse. (7-1-93)

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.02 - RULES GOVERNING SIMULCASTING

DOCKET NO. 11-0402-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 4, 2003.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, 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 15, 2003.

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 to the proposed rulemaking:

Idaho bettors are currently setting up telephone accounts in which to place pari-mutuel wagers in surrounding states. This rule change will require any operator engaging in account wagering to pay a source market fee to the Idaho State Racing Commission for disbursement to the racing industry. Also adds required sections to the rule.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The commission will receive a percentage of the account wagering handle to be used for purses, owner/breeder awards and promotion which confers a benefit.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted from April 15, 2003 through June 17, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. "Jack" Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 13th day of August, 2003.

Eugene O. "Jack" Baker
Executive Director
Idaho State Racing Commission
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0301

003. ~~(RESERVED)~~ ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (4-4-03)T

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference in this chapter of rules. (4-4-03)T

005. MAILING ADDRESS AND OFFICE HOURS.

The mailing address of the Idaho State Racing Commission is P.O. Box 700, Meridian, Idaho 83680-0700. Office hours are Monday through Friday, 8 a.m. to 5 p.m. The street address for the State Racing Commission Office is 700 S. Stratford, Meridian, Idaho 83642. (4-4-03)T

006. PUBLIC RECORDS AVAILABILITY.

Public Records are available during normal working hours for inspection and copying at the Idaho State Racing Commission Office, 700 South Stratford Drive, Meridian, ID 83680-0700. (4-4-03)T

0057. GENERAL JURISDICTION.

Simulcasting of Races within the State. The Idaho State Racing Commission shall have general jurisdiction over the simulcasting of horse and greyhound races within the state, and the Commission may issue rules in accordance with the provisions of this article as provided for in Idaho Statutes. (4-5-00)

0068. -- 0409. (RESERVED).

00410. DEFINITIONS.

01. Account. An account for advanced deposit wagering with a specific identifiable record of credits, debits, deposits, wagers, and withdrawals established by an account holder and managed by the race meet licensee or agent. (4-4-03)T

02. Account Holder. A natural person who successfully completed an application and for whom the race meet licensee has opened an account. (4-4-03)T

03. Advance Deposit Wagering. A form of pari-mutuel wagering in which a natural person may deposit money in an account with a race meet licensee and then use the current balance to pay for pari-mutuel wagering on horse racing only conducted by the race meet licensee. (4-4-03)T

04. Advance Deposit Wagering Facility. An actual location, equipment, and staff of a race meet licensee and/or agents involved in the management servicing and operation of advance deposit wagering for the race meet licensee. (4-4-03)T

05. Agent Of The Race Meet Licensee. Those persons or entities with the authority to accept deposits and wagers on behalf of the race meet licensee, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts. (4-4-03)T

06. Applicant. A natural person who has submitted an application to establish an account with a race meet licensee. (4-4-03)T

07. Application. The form or forms and other required submissions received from an applicant with the intent of opening an account. (4-4-03)T

048. Association Which Accepts The Wager. The guest association where the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (7-1-93)

029. Authorized User. A person authorized by the Commission to receive, to decode and use for legal purposes the encrypted simulcast signal of pari-mutuel events. (7-1-93)

0310. Combined Pari-Mutuel Pools (Combined Pools). The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association of the combined pari-mutuel pools of simulcast facilities within the state of Idaho. (7-1-93)

0411. Commission. The Idaho State Racing Commission. (7-1-93)

12. Confidential Information. The following information is confidential: (4-4-03)T

a. The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account; (4-4-03)T

b. The amount of money wagered by a particular account holder on any race or series of races; (4-4-03)T

c. The account number and secure personal identification code of a particular account holder; (4-4-03)T

d. The identities of particular entries on which the account holder is wagering or has wagered; (4-4-03)T

e. Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit wagering facility and race meet licensee that would identify the account holder to anyone other than the commission, the advance deposit wagering facility or the race meet licensee. (4-4-03)T

13. Credits. All positive inflow of money to an account. (4-4-03)T

14. Debits. All negative outflow of money from an account. (4-4-03)T

015. Decoder. A device and/or means to convert encrypted audio-visual signals and/or data into a form recognizable as the original content of the signals. (7-1-93)

16. Deposit. A payment of money by cash, check, money order, credit card, debit card, or electronic funds transfer made by an account holder to the account holder's account. (4-4-03)T

0617. Downlink. Receiving antenna coupled with an audio-visual signal receiver compatible with and capable of receiving simultaneous audio-visual signals and/or data emanating from a host association, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (7-1-93)

0718. Enclosure, Enclosure-Public. Includes all enclosed areas of the simulcast wagering facility. (7-1-93)

0819. Encryption (Encrypted Or Encoded). The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (7-1-93)

20. Foreign Jurisdiction. A jurisdiction of a foreign country or political subdivision thereof. (4-4-03)T

0921. Guest, Guest Association Or Simulcast Operator. An association simulcast licensee authorized by the Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (7-1-93)

- 22. Handle Or Gross Handle.** Total amount of money bet on a race less refunds and cancels. (4-4-03)T
- ~~4023.~~ **Host Or Host Association.** The racing association conducting a licensed horse racing meeting when it is authorized by the Commission to simulcast its racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (7-1-93)
- ~~424.~~ **Interstate Simulcast Wagering.** Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association or wagering conducted by a betting system within the state of Idaho on the results of one (1) or more races being run at a host association outside the state of Idaho. (7-1-93)
- ~~425.~~ **Intrastate Simulcasting Wagering.** Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (7-1-93)
- ~~43.~~ **Out Of State Wagering.** *Acceptance of wagers by a host or guest association in Idaho on the results of races run at a race meeting outside the state of Idaho. Nothing in these rules shall be deemed to include acceptance of wagers by telephone, telegraph, radio, or in any manner other than in cash or other authorized method at a pari-mutuel machine operated by one authorized pursuant to Idaho law and these rules.* (7-1-93)
- 26. Multi-Jurisdictional Simulcasting And Interactive Wagering Totalizator Hub.** A multi-jurisdictional simulcasting and interactive wagering totalizator hub is a business that, through a qualified subscriber based service, conducts pari-mutuel wagering on the races that it simulcasts and other races that it carries in its wagering menu. The term "hub" will be used in these rules to refer to the multi-jurisdictional simulcasting and interactive wagering totalizator hub. (4-4-03)T
- 27. Natural Person.** Any person at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate. (4-4-03)T
- 28. Principal Residence Address.** That place where the natural person submitting an application for an account resides at least fifty percent (50%) of the time during the calendar year. (4-4-03)T
- 29. Proper Identification.** A form of identification accepted in the normal course of business to establish that the person making a transaction is the account holder. (4-4-03)T
- 30. Qualified Subscriber Based Service.** The terms "qualified subscriber based service" and "closed-loop subscriber based system" shall mean any information service or system that uses: (4-4-03)T
- a.** A device or combination of devices; (4-4-03)T
 - i.** Authorized and operated exclusively for placing, receiving, or otherwise making a wager; and (4-4-03)T
 - ii.** By which a person must subscribe to in order to be able to place, receive or otherwise make a bet or wager. (4-4-03)T
 - b.** An effective customer verification and age verification system; and (4-4-03)T
 - c.** Appropriate data security standards to prevent unauthorized access by any person who has not subscribed or who is a minor. (4-4-03)T
- 31. Race Meet Licensee.** Any person or entity holding a currently valid license to engage in racing or related regulated activities. (4-4-03)T
- ~~4432.~~ **Satellite Facility, Intrastate Wagering Facility, Extended Wagering Facility.** The physical premises, structure and equipment utilized by a guest association for the conduct of pari-mutuel wagering on horse racing events being run elsewhere. Such facility must be a part of the license granted to the Guest or Host

Association. (7-1-93)

~~4533.~~ **Satellite Transponder, Transponder.** Leased space segment time of an earth-orbit communication satellite. (7-1-93)

~~34.~~ **Secure Personal Identification Code.** An alpha-numeric character code chosen by an account holder as a means by which the race meet licensee may verify a wager or account transaction as authorized by the account holder. (4-4-03)T

~~4635.~~ **Simulcast.** The simultaneous telecast of audio and visual signals of running horse races and other permitted pari-mutuel events conducted for the purposes of pari-mutuel wagering. (7-1-93)

~~4736.~~ **Simulcast Operator.** A person licensed by the Commission to operate a simulcast wagering system as is provided for by these rules. (7-1-98)

~~4837.~~ **Simulcast Service Supplier.** A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment; but does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (7-1-93)

~~38.~~ **Source Market Fee.** That part of a wager, made outside of the state by an Idaho resident, that is returned to the state of Idaho. (4-4-03)T

~~439.~~ **Uplink.** An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data on FCC-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the uplink. (7-1-93)

~~40.~~ **Withdrawal.** A payment of money from an account by the race meet licensee to the account holder when properly requested by the account holder. (4-4-03)T

~~41.~~ **Withdrawal Slip.** A form provided by the race meet licensee for use by an account holder in withdrawing funds from an account. (4-4-03)T

(BREAK IN CONTINUITY OF SECTIONS)

030. LICENSES FOR SIMULCAST OPERATORS.

01. License. Every person acting as a simulcast operator within Idaho shall procure a license from the Commission and no person shall act in the capacity of a simulcast operator without a valid license. Such license may be renewed annually unless the application is denied for any cause justifying suspension or revocation of license for violation of these rules. (7-1-93)

a. Submits a financial statement as required by the Idaho State Racing Commission. (7-1-93)

b. Post with the Commission a surety in the amount and in such form as the Commission may require, sufficient to ensure payment of distributable amounts of pari-mutuel pools pursuant to statute, operational costs, salaries, wages, benefits, and related financial obligations. (7-1-93)

c. Demonstrates experience and/or adequate knowledge of the conduct of simulcast wagering and/or pari-mutuel wagering operations. (7-1-93)

d. The association intending to conduct wagering on an out-of-state race files with the Commission a completed simulcast application. The application will be provided and approved by the Commission. At a minimum

the application will require the applicant to provide the following information: (4-4-03)T

- i. The number of live races ran in the current year: (4-4-03)T
- ii. The number of live races ran in the preceding year: (4-4-03)T
- iii. Documentation that the required bond has been posted: (4-4-03)T
- iv. Documentation that the appropriate public liability insurance has been obtained: (4-4-03)T
- v. A signed approval letter from the appropriate county commissioners: (4-4-03)T
- vi. A signed contract from a local horsemen's group. The horsemen's group must be one which meets the definition of a horsemen's group as delineated in Section 54-2502, Idaho Code. The contract must not be in conflict with any of the provisions of Sections 3001 through 3007 of Title 15 of the United States Code or any other federal laws: (4-4-03)T
- vii. A statement setting forth the date and time it intends to commence accepting wagers on out-of-state race or races; and (4-4-03)T
- viii. Any other written or oral approvals required by the Commission. (4-4-03)T

02. Granting Restrictions. (7-1-93)

a. No license as simulcast operator shall be granted to a person or entity who has failed, refused or neglected to comply with any rule, condition of license, or order of the Commission or its stewards reasonably related to its conduct as a simulcast operator, or who has engaged in any activity which is grounds for denial, suspension or revocation of license pursuant to the rules of the Commission or whose general partners, officers, directors, or employees have engaged in any unlawful activity determined to be conduct detrimental to the best interest of horseracing. (7-1-93)

b. Additionally, no license as simulcast operator shall be granted to a person or entity who has failed, refused or neglected to enter into an agreement with a Horsemen's group as defined by Section 54-2502, Idaho Code. (7-1-98)

03. No Limitation. There shall be no limitation as to the number of days a licensee may operate except as may otherwise be provided for within these rules or the Idaho Code. (7-1-93)

031. -- 034. (RESERVED).

035. DUTIES OF SIMULCAST OPERATOR.

01. General. A simulcast operator conducts and operates a pari-mutuel wagering system at one (1) or more guest associations on the results of horse races being held or conducted and simulcast from the enclosures of one or more host associations pursuant to its agreement with such guest and host association and with the approval of the Commission. (7-1-93)

02. Provisions. A simulcast operator shall provide: (7-1-93)

a. Adequate transmitting and/or receiving equipment which shall not interfere with the closed circuit TV system of the host track association for officiating any on-track patron information. All to be acceptable broadcast quality and meet applicable Federal Communication Commission and Commission rules and orders. Said equipment may include approved microwave transmitters, with appropriate safeguards, as approved by the Commission. (7-1-93)

b. Pari-mutuel terminals, pari-mutuel odds display, modems and/or switching units enabling pari-mutuel data transmissions, and data communication between the sending and the receiving associations. (7-1-98)

c. A voice communication system between each guest association and the host association providing direct voice contact among the stewards, placing judges and/or pari-mutuel departments. (7-1-93)

03. Wagering. A simulcast operator shall conduct the pari-mutuel wagering at a guest association pursuant to the applicable Commission rules. (7-1-93)

04. Pari-Mutuel Inspector. The Commission shall appoint at least one (1) state pari-mutuel inspector to supervise the operation of the pari-mutuel of all approved simulcast facilities and may require additional pari-mutuel inspectors as is reasonably necessary for the protection of the public interest. The State Pari-Mutuel Inspector, as well as a member or members of the commission, shall: ~~(7-1-98)~~(4-4-03)T

a. Be given free access to all of the books, papers and records of the race meet licensee at any and all times. (4-4-03)T

b. Be empowered to direct the race meet licensee to adopt such rules and to install such methods and systems of operating the mutuel department as may be deemed necessary so as to ensure compliance with the law and the rules of the commission. (4-4-03)T

c. The said State Pari-Mutuel Inspector shall report to the commission any failure of the licensee to comply with the provision hereof or any violation of the law or any of the rules of the commission which may come to his attention, including in his reports, recommendations with respect to the revocation of the licenses of any employee of the race meet licensee for failure to comply with the rules of the commission, or for fraud, dishonesty, or incompetency. (4-4-03)T

05. Video Record. The simulcast operator shall, for a period of one (1) year, retain a video record of all simulcasts, in decoded form, and shall provide a copy of such record on a one-half (1/2) inch V.H.S. video cassette to the Commission, or have the ability to acquire such record from the host track upon request. (7-1-93)

06. Test Program. Not less than thirty (30) minutes prior to the commencement of transmission of the racing program for each day or night, the simulcast operator shall initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system. (7-1-93)

07. Display. The simulcast operator shall, at the request of any representative of the Commission, display a listing of all locations within this state enabled to receive the simulcast in decoded forms; and failure to do so is grounds for immediate summary suspension of license and immediate cessation of simulcasting activities. (7-1-93)

08. Security. The simulcast operator shall maintain such security controls over its uplink and communications system as directed by the Commission. (7-1-93)

09. Report. The simulcast operator shall, in conjunction with the host association or associations for which it operates pari-mutuel wagering, provide the Commission with a certified report of its pari-mutuel operations as directed by the Commission. (7-1-93)

10. Filing. Every ~~simulcast operator shall file with~~ association at the request of the Commission shall file an annual report of its live and simulcast operations, and an audited ~~financial statement~~ balance sheet and income statement prepared according to Generally Accepted Accounting Principles. ~~(7-1-93)~~(4-4-03)T

11. Compliance. The simulcast operator shall comply with Section 54-2512, Idaho Code. (7-1-93)

036. OUT-OF-STATE AND INTERSTATE WAGERING.

01. General. When conducting out-of-state and Interstate wagering, the following conditions shall also apply: (7-1-93)

~~a. A racing association, guest association, or simulcast operator may conduct a simulcast wagering~~

~~on the results of one (1) or more races conducted by an out-of-state racing association provided: (7-1-93)~~

~~i. The association intending to conduct wagering on an out-of-state race files with the Commission a copy of the agreement with the out-of-state association and a completed simulcast application. The application will be provided and approved by the Commission. At a minimum the application will require the applicant to provide the following information: (7-1-98)~~

~~(1) The number of live races ran in the current year: (7-1-98)~~

~~(2) The number of live races ran in the preceding year: (7-1-98)~~

~~(3) Documentation that the required bond has been posted: (7-1-98)~~

~~(4) Documentation that the appropriate public liability insurance has been obtained: (7-1-98)~~

~~(5) A signed approval letter from the Appropriate County Commissioners; (7-1-98)~~

~~(6) A signed Contract from a local horsemen's group. The horsemen's group must be one which meets the definition of a horsemen's group as delineated in Section 54-2502, Idaho Code. The contract must not be in conflict with any of the provisions of Sections 3001 through 3007, of Title 15 of the United States Code or any other federal laws; (7-1-98)~~

~~(7) A statement setting forth the date and time it intends to commence accepting wagers on out-of-state race or races; and (7-1-98)~~

~~(8) Any other written or oral approvals required by the Commission. (7-1-98)~~

#02. Commission Approval Of Methods. The Commission approves the methods by which the out-of-state association intends to transmit the simulcast of its race or races and the restrictions, if any, placed on the use of such simulcast, and the methods to be used to assure a separate voice communication system between its steward and the stewards or placing judges at the track where the race or races are held. ~~(7-1-93)(4-4-03)T~~

ba. A racing association may authorize use of its simulcast for interstate wagering by out-of-state betting systems provided: (7-1-93)

bb. The association files with the Commission a copy of the agreement with the out-of-state betting system which sets forth the payment to the association for use of its simulcast, and of any agreements required by Chapter 57, including Section 3001, of Title 15 of the United States Code. (7-1-93)

023. Permitted. Wagering shall be permitted only on races conducted at approved locations at pari-mutuel tracks governed by a state racing commission, racing board or other governmental agency. (7-1-93)

034. Interruption. If a simulcasting facility has an interruption in its audio-visual signal, the race may be deemed no contest at the discretion of the assigned steward and all wagers at the facility in such instances shall be refunded. (7-1-93)

045. Results. All wagers are made on the official results of the hosting track. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

042. AUTHORIZATION FOR ADVANCED DEPOSIT WAGERING.

01. Authorization To Conduct Advanced Deposit Wagering. A race meet licensee who is the holder of or applicant for a license issued under Section 011 of these rules, may request authorization from the commission

to conduct advanced deposit wagering in accordance with Section 54-2512(5), Idaho Code, and these rules. As part of the request, the race meet licensee shall submit a detailed plan of how its proposed advance deposit wagering system would operate, the commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request. (4-4-03)T

02. Investigations Or Inspections. The commission may conduct investigations or inspections or request additional information from the race meet licensee or applicant for a license as it deems appropriate in determining whether to allow the race meet licensee to conduct advance deposit wagering. (4-4-03)T

03. Establish And Manage Advance Deposit Wagering Center. The race meet licensee or the agent of the race meet licensee shall establish and manage an advance deposit wagering center. (4-4-03)T

04. Out Of State Providers. Any advance deposit wagering conducted by a person with a provider outside of the state by telephone or other electronic means shall be illegal unless that provider is licensed by the Idaho state racing commission and provides a source market fee of not less than ten percent (10%) of the handle forwarded monthly to the commission. (4-4-03)T

043. ESTABLISHING AN ACCOUNT.

01. Establishing An Account. An established account is necessary to place advance deposit wagers. An account may be established at either an advance deposit wagering center or by mail to a race meet licensee. (4-4-03)T

a. For establishing the account with an advance deposit wagering center an application form must be signed or otherwise authorized in a manner acceptable to the commission and include the applicant's: (4-4-03)T

i. Full legal name; (4-4-03)T

ii. Principal residence address; (4-4-03)T

iii. Telephone number; (4-4-03)T

iv. Social security number; (4-4-03)T

v. Proper identification or certification demonstrating that the applicant is at least eighteen (18) years of age; and (4-4-03)T

vi. Any other information required by the commission. (4-4-03)T

b. Each application submitted will be subject to electronic verification, with respect to name, principal residence address, date of birth and Social Security number, by either an independent service provider or another means which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by an independent service provider. If there is a discrepancy between the application submitted and the information provided by the electronic verification described herein, or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. (4-4-03)T

02. Minimum Deposit. In establishing an account a minimum deposit of fifty dollars (\$50) is required. (4-4-03)T

03. Identifying Account Number. Each account shall have an unique identifying account number. The identifying account number may be changed at any time by the advance deposit wagering center provided the advance deposit wagering center informs the account holder in writing prior to the change. (4-4-03)T

04. Secure Personal Identification Code. The applicant shall supply the advance deposit wagering center with an alpha-numeric code, to be used as a secure personal identification code when the account holder is

placing an account wager. The account holder has the right to change this code at any time. (4-4-03)T

05. Principle Residence. The principal residence address shall be established by reliance on the information submitted on the application form provided and certified by the applicant. (4-4-03)T

06. The Account Holder Shall Receive. The holder of the account shall receive, at the time the account is approved: (4-4-03)T

a. A unique account identification number; (4-4-03)T

b. A copy of the advance deposit wagering rules and such other information and material that is pertinent to the operation of the account; (4-4-03)T

c. Such other information as the advance deposit wagering center or commission may deem appropriate. (4-4-03)T

07. Name Of Natural Persons. The advance deposit wagering center shall accept accounts in the name of a natural person only. (4-4-03)T

08. Nontransferable. The account is nontransferable between natural persons. (4-4-03)T

09. Close Or Refuse To Open An Account. The advance deposit wagering center may close or refuse to open an account for what it deems good and sufficient reason, and shall order an account closed if it is determined that information that was used to open an account was false, or that the account has been used in violation of these rules. (4-4-03)T

044. OPERATION OF AN ACCOUNT.

01. Center May Refuse Deposits. The advance deposit wagering center may refuse deposits to an account for what it deems good and sufficient reason. (4-4-03)T

02. Center May Suspend Or Close Account. The advance deposit wagering center may suspend any account or close any account at any time provided that when an account is closed, the advance deposit wagering facility shall, within five (5) business days, return to the account holder all monies then on deposit by sending a check to the principal residence address as listed on the application. (4-4-03)T

03. Credits To An Account. Credits to an account after the initial establishment of the account may be made as follows: (4-4-03)T

a. Deposits to an account by an account holder shall be made in the following forms: (4-4-03)T

i. Cash given to the staff of an advance deposit wagering center; or (4-4-03)T

ii. Personal or cashier check, money order given or sent to an advance deposit wagering center; or (4-4-03)T

iii. Charges made to an account holder's credit card or debit card upon the direct and personal instruction of the account holder, which may be given by telephone or any electronic device to the advance deposit wagering facility by the account holder if the use of the card has been approved by the advance deposit wagering center; or (4-4-03)T

iv. Transfer by means of an electronic funds transfer from a monetary account controlled by an account holder to his account, said account holder is liable for any charges imposed by the transmitting or receiving entity with such charges to be deducted from the account. (4-4-03)T

b. Credit for winnings from wagers placed with funds in an account and credit for account wagers on entries that are scratched shall be posted to the account by the advance deposit wagering center. (4-4-03)T

04. Debits To An Account. Debits to an account shall be made as follows: (4-4-03)T

a. Upon receipt by the advance deposit wagering center of an account wager, the advance deposit wagering center shall debit the account in the amount of the wager; or (4-4-03)T

b. For fees for service or other transaction-related charges by the race meet licensee or agent of the race meet licensee; or (4-4-03)T

c. An advance deposit wagering center may authorize a withdrawal from an account when one (1) of the following exists: (4-4-03)T

i. The account holder of an account appears personally at the advance deposit wagering center and provides the following: (4-4-03)T

(1) Proper identification; (4-4-03)T

(2) The correct secure personal identification code; and (4-4-03)T

(3) A properly completed and signed withdrawal slip. (4-4-03)T

ii. The account holder sends to the advance deposit wagering center a properly completed and signed withdrawal slip. Upon receipt of a properly completed and signed withdrawal slip, and if there are sufficient funds in the account to cover the withdrawal, the advance deposit wagering center shall, within five (5) business days of its receipt, send a check to the account holder. The check shall be payable to the holder of the account and in the amount of the requested withdrawal. If funds are not sufficient to cover the withdrawal, the account holder will be notified in writing and those funds in the account will be withdrawn and sent to the account holder within the five (5) business day time period. Electronic funds transfers may be used for withdrawals in lieu of a check at the discretion of the account holder and the advance deposit wagering center subject to the same conditions described for electronic funds transfer credits described in Subsection 044.03.a.iv. of this rule. (4-4-03)T

d. The race meet licensee or the agent of the race meet licensee may close accounts in which there has been no activity for at least six (6) months, returning funds remaining therein to the account holder at his principal residence address. (4-4-03)T

e. In the event an account holder is deceased, funds accrued in the account shall be released to the decedent's legal representative upon receipt of a copy of a valid death certificate, tax releases or waivers, probate court authorizations or other documents required by applicable laws. (4-4-03)T

05. Shall Not Accept Wagers In Excess Of Account Balance. The advance deposit wagering center shall not accept wagers from an account holder in an amount in excess of the account balance. (4-4-03)T

06. Accordance With Financial Institution. Checks, money orders and other negotiable instruments shall be posted to the credit of the account holder in accordance with financial institution funds availability schedules. (4-4-03)T

07. Accounts Shall Not Bear Any Interest. Monies deposited with the advance deposit wagering center for advance deposit wagering shall not bear any interest to the account holder. (4-4-03)T

045. -- 049. (RESERVED).

050. MULTI-JURISDICTIONAL SIMULCASTING AND INTERACTIVE WAGERING TOTALIZATOR HUB - ADVANCE DEPOSIT WAGERING RULES APPLY.

01. Residents Of The State Of Idaho. The advance deposit wagering rules, as set forth in Sections 042 through 050 of these rules, shall apply to the establishing and to the operation of an account for residents of the state of Idaho by the hub operator or its agents unless expressly noted otherwise in these rules. (4-4-03)T

02. Principal Residence. Notwithstanding Section 044 of these rules, accounts can be established and operated for people whose principal residence is outside of the state of Idaho including residents of foreign jurisdictions, if: (4-4-03)T

a. Wagering on that same type of live racing is lawful in the jurisdiction which is the natural person's principal residence; and (4-4-03)T

b. The hub complies with the provisions of the Interstate Horseracing Act, 15 U.S.C. Sections 3001 to 3007. (4-4-03)T

03. No Surcharge For Non-Idaho Residents. Notwithstanding Section 045 of these rules, there will be no surcharge charged on any wager being processed through the hub for non-Idaho residents. (4-4-03)T

04. Closed-Loop Subscriber Based System. Nothing in Section 043 of these rules prohibits the making or acceptance of wagers over a closed-loop subscriber based system. (4-4-03)T

05. Residence Outside The State Of Idaho. Requirements for the establishment and operation of accounts for individuals whose principle residence is outside of the state of Idaho shall be set forth in the operation plan as stated in Subsection 044.03 of these rules. (4-4-03)T

051. APPROVAL OF THE LICENSE FOR AN ADVANCE DEPOSIT WAGERING HUB OPERATION.

01. License Granted. Prior to operating a hub the entity must apply for and be granted a license from the commission to conduct simulcasting and pari-mutuel wagering in accordance with Subsection 011.01 of these rules as a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub." (4-4-03)T

02. License For Multi-Jurisdictional Simulcasting And Interactive Wagering Totalizator HUB. An applicant for a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub" license must provide the following information as part of the application: (4-4-03)T

a. The applicant's legal name; (4-4-03)T

b. If the applicant is a corporation, the names, addresses, dates of birth of its shareholders, directors and officers; if a shareholder is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its shareholders, directors and officers must be provided; (4-4-03)T

c. If the applicant is a partnership the names, addresses, dates of birth of the partners; if a partner is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its share holders must be provided; (4-4-03)T

d. If the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in Subsection 051.02.b. and 051.02.c. of these rules shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders; (4-4-03)T

e. The names of the race tracks the applicant, or its agent, has contracts with that allow the applicant to provide the simulcast signals and pari-mutuel wagering on the product; (4-4-03)T

f. Financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate a hub; (4-4-03)T

g. A detailed budget showing anticipated revenue, expenditures and cash flows by month, from the hub's operation during the license period; and (4-4-03)T

h. The number of days that the applicant is planning to operate the hub during the fiscal year in which they are seeking to be licensed. (4-4-03)T

03. Detailed Plan Of Operations. As part of the application for licensure as a hub, the applicant shall submit a detailed plan of operations in a format and containing such information as required by the commission. At a minimum, the operating plan shall address the following issues: (4-4-03)T

a. The manner in which the proposed simulcasting and wagering system will operate: (4-4-03)T

b. The requirements for a “qualified subscriber based service” or “closed loop subscriber based system” set out in Subsection 051.01: (4-4-03)T

c. Programs for responsible wagering: (4-4-03)T

d. Mitigation for the effects of advance deposit wagering on the source market in which the account holder resides; and (4-4-03)T

e. The requirements for accounts established and operated for persons whose principal residence is outside of the state of Idaho. The commission may require changes in a proposed plan of operations as a condition of granting a license. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request. (4-4-03)T

04. Investigations Or Inspections. The commission may conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application. (4-4-03)T

05. Bond Or Irrevocable Letter Of Credit. The applicant will provide the commission a bond or irrevocable letter of credit in the amount set by the commission which will be used to ensure that payments to the commission and to the wagering accounts are made. An account holder, who is claiming that nonpayment has occurred, shall make a claim of non-payment to the commission. The commission will investigate the claim and provide the hub with an opportunity to respond thereto and submit any supporting documents or evidence it needs to defend the claim. If the commission determines that the account holder is entitled to restitution, the hub shall have ten (10) days to pay the amount determined by the commission. If the hub fails to make restitution within this time, the commission may take appropriate action against the bond. (4-4-03)T

07. Promote And Advertise. An applicant licensed under this section may enter into such agreements, as for what it deems good and sufficient reasons, are necessary to promote, advertise and further the sport of racing or that may be necessary for the effective operation of interstate account wagering, including, without limitation, television production and telecommunications services. (4-4-03)T

052. TOTAL TAKE-OUT RATES FOR NON-MERGED POOLS. The hub operator shall as part of the operational plan, or update to the plan, set the total take-out rate, subject to the approval of the commission, for those wagering pools which are not merged with the wagering pools of the race track where the race is being run live. (4-4-03)T

053. WHERE THE WAGER IS CONSIDERED TO HAVE BEEN MADE.

01. From An Account Maintained By The Hub Operator. Any wager that is made from an account maintained by the hub operator is considered to have been made in the state of Idaho. (4-4-03)T

02. Instructions For Account Wagers. Account holders may communicate instructions concerning account wagers to the hub in person, by mail, telephone, or electronic means. (4-4-03)T

054. POWERS OF THE COMMISSION TO REVIEW AND AUDIT RECORDS. The commission, or its staff, will be given access to all records and financial information of the hub operator, including all account information, for review and audit. This information will be made available to the commission or commission staff, by the hub operator at the hub location, upon notice from the commission or commission staff at all reasonable times. The commission may require that the hub operator annually submit to the commission audited financial statements of the advance deposit wagering system. (4-4-03)T

055. -- 059. (RESERVED).

060. DISTRIBUTION OF RECEIPTS FROM MULTI-JURISDICTIONAL SIMULCASTING AND INTERACTIVE WAGERING TOTALIZATOR HUBS.

01. Distribution. From the payments made to the Idaho State Racing Commission by Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hubs, the commission shall: (4-4-03)T

a. Receive a source market fee of not less than ten percent (10%) of the handle shall be forwarded monthly to the commission. Distribution of the source market fee shall be: (4-4-03)T

i. Forty percent (40%) to purses at all tracks weighted by number of races ran through the year of distribution: (4-4-03)T

ii. Forty percent (40%) to the simulcast sites in the state weighted by the annual simulcast handle: (4-4-03)T

iii. Five percent (5%) to the track distribution fund pursuant to Section 54-2513, Idaho Code: (4-4-03)T

iv. Five percent (5%) to the breed distribution fund pursuant to Section 54-2513, Idaho Code: (4-4-03)T

v. Five percent (5%) to the Idaho State Racing Commission, and: (4-4-03)T

vi. Five percent (5%) to the public school income fund pursuant to Section 54-2513, Idaho Code. (4-4-03)T

02. Acceptance Of Advance Deposit Wagers. Account wagers shall be accepted at the time and in the manner designated by the commission. (4-4-03)T

03. Closed Wagering. Notwithstanding any other rules, the managing employee of the advance deposit wagering center may at any time declare the advance deposit wagering center closed for receiving wagers on any pari-mutuel pool, race, group of races, or closed for all wagering. Anytime the advance deposit wagering center is closed during normal wagering hours by the managing employee a written report must be filed with the commission within forty-eight (48) hours. (4-4-03)T

04. Refuse To Accept. The advance deposit wagering center has the right at any time and for what it deems good and sufficient reason to refuse to accept all or part of any wager. (4-4-03)T

05. Account Holder Responsibilities. Accounts are for the personal use of the account holder. The account holder is responsible for maintaining the secrecy of the account number and secure personal identification code. Except where the advance deposit wagering center or its employees or agents act without good faith or fail to exercise ordinary care, the advance deposit wagering center shall not be responsible for any loss arising from the use by any other person or persons of an account holder's account. The account holder must immediately notify the advance deposit wagering center of a breach of the account's security. (4-4-03)T

06. Payments On Winning Pari-Mutuel Wagers. Payment on winning pari-mutuel wagers and credits for account wagers on entries which are scratched shall be posted to the credit of the account holder as soon as practicable after the race is declared official. (4-4-03)T

07. Written Statements. The advance deposit wagering center shall, from time to time, but not less than once per year, provide written statements of an individual's account activity during the period to each account holder. In addition, an account holder has the right to request a statement at any time. Unless written notice to the contrary is received by the advance deposit wagering center within fourteen (14) days of the date that any statement is sent to an account holder, the statement will be deemed accepted as correct. (4-4-03)T

08. Mailing Address. The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder. (4-4-03)T

09. Confidential Information. No employee or agent of the advance deposit wagering center shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the advance deposit wagering center, except to the account holder as required by these rules, the commission, and as otherwise required by state or federal law, or the rules of racing of this state. (4-4-03)T

04261. -- 999. (RESERVED).

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Title 23, 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 15, 2003.

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 definition of a restaurant for the purposes of the alcohol beverage code requires revision to provide licensees with more specific information upon which to make business decisions and to allow more consistent enforcement of Title 23 Alcohol Beverage Code. Rules governing display of licenses need to be added and/or changed to provide licensees with specific period of time following loss or move of a licensed premise, in which to secure and occupy a new premise and display the alcohol beverage license.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Protection of the public safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lt. Bob Clements, 884-7060.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7003 / 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0501-0301

010. DEFINITIONS.

01. Licensee. Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

02. Licensed Premises. Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee's application for a license shall constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (~~7-1-93~~)(1-1-04)T

03. New Licenses. For purposes of Section 23-908(4), Idaho Code, a "new license" is one that has become available as an additional license within a city's limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months shall be satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (1-1-94)

04. Restaurant. The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premise consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. ~~The establishment must be able to demonstrate to the satisfaction of the Director, through recordkeeping, that no more than fifty percent (50%) of the gross revenues from the sale of food and beverages is derived from the sale of alcoholic beverages.~~ Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following: (~~4-5-00~~)(1-1-04)T

a. An established menu identifying the individually priced meals for consumption; (1-1-04)T

b. Food service and preparation occurs on the premises by establishment employees; (1-1-04)T

c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (1-1-04)T

d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishments consumable purchases are derived from purchases of food and non-alcoholic beverages. (1-1-04)T

05. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license shall be deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, shall not be deemed a transfer. (3-13-02)

IDAPA 11 - IDAHO STATE POLICE
11.10.01 - RULES GOVERNING THE ILETS -
IDAHO LAW ENFORCEMENT TELETYPEWRITER SYSTEM
DOCKET NO. 11-1001-0301
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 Title 19, Chapter 52, 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 15, 2003.

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 proposed rule amendments will strengthen ILETS network security requirements to comply with federal standards, particularly in regard to password and encryption policies. They will also update terminology relating to network security and agency agreements and will update the citations for national policies incorporated by reference.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because negotiated rulemaking does not apply. The ILETS Board has reviewed the proposed revisions and approved them at a regularly scheduled meeting. The majority of the changes relate to grammar changes to conform to a standard.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robert Taylor, 884-7130.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 7th day of August, 2003.

Colonel R. Dan Charboneau
Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7003
884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1001-0301

000. LEGAL AUTHORITY.

Title 19, Chapter 52, Idaho Code, creates a teletypewriter communications board and authorizes it to make rules necessary to establish and operate the Idaho ~~L~~aw ~~e~~Enforcement ~~T~~eletypewriter ~~s~~ystem (ILETS). ~~(3-30-01)(_____)~~

001. TITLE AND SCOPE.

01. Title. These rules ~~shall be~~ are cited as IDAPA 11.10.01, "Rules Governing ILETS - Idaho Law Enforcement Teletypewriter System". ~~(3-30-01)(_____)~~

02. Scope. These rules relate to the governance and operation of the Idaho Law Enforcement Teletypewriter System. ~~(3-30-01)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter ~~shall be~~ are governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". ~~(3-30-01)(_____)~~

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 11.10.01 incorporates by reference the full text of the requirements relating to criminal justice information and the system used to transport such information found in the following documents: ~~(3-30-01)(_____)~~

a. "Criminal Justice Information Systems," 28 CFR Part 20 ~~(1999)~~ (July 1, 2003); ~~(3-30-01)(_____)~~

b. "Criminal Justice Information Systems--CJIS Security Policy," Federal Bureau of Investigation, National Crime Information Center ~~(May 1999)~~, Version 3.1 (September 2002); ~~(3-30-01)(_____)~~

c. "National Crime Information Center 2000, Operating Manual," Federal Bureau of Investigation, National Crime Information Center ~~(April 1, 1998)~~ (December 1999); ~~(3-30-01)(_____)~~

d. "National Law Enforcement Telecommunication System, Users Guide," NLETS, Users Guide, ~~(November 7, 1997)~~ (January 1, 2003); ~~(3-30-01)(_____)~~

e. "National Law Enforcement Telecommunication System, Policies and Procedures," NLETS, Policies and Procedures, ~~(May 22, 1989)~~ (May 1, 2002). ~~(3-30-01)(_____)~~

02. Document Availability. The above listed documents are available during normal working hours for inspection and copying at the Idaho State Police, Bureau of Criminal Identification, 700 South Stratford Drive, Meridian, Idaho. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORD ACT COMPLIANCE.

All records associated with the board and its management of ILETS are subject to, and in compliance with, the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. Information made available to ILETS users with access to the network is from various sources, including other states, nations, and the federal government. That information remains subject to the laws and regulations of its original source or official custodian. (_____)

~~0067.~~ -- 009. (RESERVED).

010. DEFINITIONS.

01. Access Agency. An agency that electronically accesses ILETS through the services of an interface agency. ()

~~012.~~ **Administration Of Criminal Justice.** (3-30-01)

a. Administration of Criminal Justice means performance of any of the following activities: (3-30-01)

i. Detection; (3-30-01)

ii. Apprehension; (3-30-01)

iii. Detention; (3-30-01)

iv. Pretrial release; (3-30-01)

v. Post-trial release; (3-30-01)

vi. Prosecution; (3-30-01)

vii. Adjudication; (3-30-01)

viii. Correctional supervision; or (3-30-01)

ix. Rehabilitation of accused persons or criminal offenders. (3-30-01)

b. The administration of criminal justice includes: (3-30-01)

i. Criminal identification activities; and (3-30-01)

ii. The collection, storage, and dissemination of criminal history record information. (3-30-01)

~~023.~~ **Associated System.** Any automated or manual information system that is accessible through ILETS. (3-30-01)

04. Board. The board created, ~~pursuant to~~ by Title 19, Chapter 52, Idaho Code, to establish priorities and operational policies and procedures relating to ILETS. (~~3-30-01~~)()

~~035.~~ **Criminal Justice Agency.** (3-30-01)

a. Federal and state courts having jurisdiction to hear criminal matters; and (3-30-01)

b. A government agency or a subunit of an government agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of justice. (~~3-30-01~~)()

~~056.~~ **Department.** The Idaho ~~Department of Law Enforcement~~ State Police, or its successor agency. (~~3-30-01~~)()

~~067.~~ **Executive Officer.** ~~As provided by Title 19, Chapter 52, Idaho Code, means~~ A position on the ILETS Board filled by the director of the Idaho Department of Law Enforcement State Police, or its successor agency. (~~3-30-01~~)()

~~078.~~ **III.** The Interstate Identification Index, which is a cooperative federal-state system for the

exchange of automated criminal history records and, to the extent of their participation in the III system, the criminal history repositories of the states. (3-30-01)

089. ILETS. The Idaho Law Enforcement Teletypewriter (telecommunication) system as established by the director of ~~law enforcement~~ Idaho State Police pursuant to Title 19, Chapter 52, Idaho Code, ~~and~~ includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry, ~~and terminal devices~~ that comprise the system ~~and includes access to the system.~~ (3-30-01)(____)

10. Interface Agency. An agency that has management control of a computer system directly connected to ILETS. (____)

091. Management Control Agreement. A written agreement between a criminal justice agency and a non-criminal justice agency that provides services (dispatching, record keeping, computer services, etc.) to the criminal justice agency. The agreement ~~shall~~ gives the criminal justice agency authority to set and enforce policies governing the non-criminal justice agency's access to ILETS. (3-30-01)(____)

102. NCIC 2000. The Federal Bureau of Investigation; National Crime Information Center, ~~which~~ is a computerized information system that includes telecommunications lines and ~~any~~ message facilities authorized by law, regulation, or policy approved by the United States Attorney General to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC 2000 system includes information in the III system. (3-30-01)(____)

143. NLETS. The National Law Enforcement Telecommunication System, Incorporated, is a national computerized message switching system that links national and state criminal justice information systems. (3-30-01)(____)

124. Non-Criminal Justice Agency. A state agency, federal agency, or unit of local government that is not a criminal justice agency. The term does not refer to private individuals, corporations, or non-governmental agencies or organizations. (3-30-01)

011. (RESERVED).

012. EXECUTIVE OFFICER OF THE BOARD.

01. Authority Of Office. The executive officer ~~shall~~ represents the board in the day-to-day administration of ILETS and is responsible for ensuring that all policies and decisions of the board are promulgated pursuant to the authority of Chapter 52, Title 19, Idaho Code. The executive officer may delegate duties to employees and officers of the department and ~~shall~~ executes instruments for, and on behalf of, the board and ILETS. (3-30-01)(____)

02. Additional Responsibilities. In addition to the responsibilities assigned to the office by statute, the executive officer is responsible for ensuring, subject to adequate legislative appropriations, that the board receives adequate staff support and that the following staff duties are performed: (3-30-01)

a. Preparation and dissemination of agendas, posting of legal notices of all meetings, and maintenance of a written record of the proceedings of board meetings; and (3-30-01)

b. Management and safekeeping of all documents relating to the board and ILETS operations. (3-30-01)

03. Governing Policies And Rules. The executive officer and any department employees and officials assigned by the executive officer to support ILETS operations will be governed by policies and rules of the State of Idaho and the department concerning, but not limited to, fiscal, purchasing, and personnel matters. (3-30-01)

013. ILETS BOARD; == MEETINGS AND QUORUM.

01. Schedule Of Meetings. The board ~~shall~~ holds regular meetings ~~at least~~ twice annually and may

hold special meetings at other times as the executive officer deems necessary or upon the written request of a majority of the board. The regular semi-annual meetings of the board ~~shall~~ will be scheduled on such dates and at such times as the executive officer may determine after consultation with the members. Meeting announcements and agendas ~~shall~~ will be mailed to each member not less than ten (10) working days before a regular meeting. ~~(3-30-01)~~(____)

02. Quorum. When meeting, four (4) members of the board ~~shall~~ constitute a quorum necessary for transacting business. ~~(3-30-01)~~(____)

03. Representation At Meetings. A board member may not appoint an alternate to attend a meeting and exercise the voting privilege of that member. (3-30-01)

04. Posting And Minutes Of Meetings. Notice of ~~B~~board meetings ~~shall~~ will be posted and meetings will be conducted in compliance with the "Idaho Open Meeting Law", Sections 67-2340 through 67-2347, Idaho Code. Minutes of all regular and special meetings of the board ~~shall~~ will be prepared and maintained by staff assigned by the executive director to support the board. ~~(3-30-01)~~(____)

014. ILETS BOARD; == POWERS AND DUTIES, CHAIRMAN, AND AD HOC ADVISORY COMMITTEES.

01. Powers And Duties. Pursuant to its authority under Title 19, Chapter 52, Idaho Code, the board establishes policies relating to management and operation of ILETS. The board ~~shall~~ enforce compliance with all laws and regulations governing ILETS operations. ~~(3-30-01)~~(____)

02. Election Of Chairman. At the first regular meeting of a calendar year, the board ~~shall~~ elects a chairman from its membership ~~a chairman~~ by majority vote ~~of the board~~. The chairman ~~shall~~ serve a term of one (1) year and may succeed himself. ~~(3-30-01)~~(____)

03. Presiding Officer. The chairman ~~shall~~ presides at all meetings and conduct the meetings pursuant to "Roberts' Rules of Order, Current Revised Edition". If the chairman is absent ~~at~~ from a meeting, the executive officer ~~shall~~ presides at that meeting. ~~(3-30-01)~~(____)

04. Advisory Committees. With the approval of the board, the chairman may appoint ad hoc advisory committees to assist the board in the execution of its statutory duties. An advisory committee may include non-board members who would be of value to the committee's assigned task. An advisory committee ~~shall~~ must include ~~not less than~~ at least one (1) member of the ILETS board. Committee reports ~~shall~~ are to be submitted to the board in writing. ~~(3-30-01)~~(____)

015. ILETS BOARD; == RESIGNATIONS AND REPLACEMENTS; NOTIFICATION.

01. Members Who No Longer Qualify. Any board member who ceases to qualify as a member ~~shall~~ must at once notify the Governor and the executive officer. ~~(3-30-01)~~(____)

02. Resignations. Any board member who desires to terminate that member's service on the board ~~shall~~ must at once notify the Governor and the executive officer of that intention. ~~(3-30-01)~~(____)

03. Notification Of Relevant Professional Associations. The executive officer ~~shall~~ forwards any notification received from a member to the relevant professional association representing Idaho sheriffs and chiefs of police. ~~(3-30-01)~~(____)

016. ILETS NETWORK.

01. Establishment. ~~Pursuant to Title 19, Chapter 52, Idaho Code, the~~ executive officer ~~shall~~ establishes ILETS as a program of the ~~department of law enforcement~~ Idaho State Police or its successor agency. ~~(3-30-01)~~(____)

02. Responsibilities. The program, as established by the executive officer, ~~shall have~~ has the following responsibilities: ~~(3-30-01)~~(____)

- a. Develop and operate a computerized criminal justice telecommunications and information system that provides message switching and record inquiry and retrieval capabilities. (3-30-01)
- b. Publish an ILETS Operations Manual and distribute copies to each user agency. (3-30-01)
- c. Function as the NCIC control terminal agency and the NLETS control terminal agency for the State of Idaho. (3-30-01)
- d. Assist and train criminal justice agencies regarding information retrieved from ILETS and associated systems for use in administration of criminal justice. (3-30-01)
- e. Develop and maintain linkages with the Idaho Transportation Department, Idaho Department of Correction, other agencies and systems to make appropriate information available to Idaho criminal justice agencies that will assist them in the enforcement of state criminal and traffic laws and regulations. (3-30-01)
- f. Provide staff support to the ILETS board. (3-30-01)
- g. Operate a program of record validation, quality control, and audits to ensure that records entered into ILETS and NCIC files by the department and user agencies are kept accurate and complete and that compliance with state and national standards is maintained. (3-30-01)
- h. Create model management control agreements between criminal justice agencies and non-criminal justice agencies. (3-30-01)
- i. Provide assistance and information access to non-criminal justice user agencies for statutory licensing, employment and regulatory purposes and for other purposes authorized by law and approved by the board. (3-30-01)

017. AGENCY ACCESS TO ILETS.

01. Authorized Agencies. Consistent with Title 19, Chapter 52, Idaho Code, which mandates the exclusive use of ILETS for law enforcement and traffic safety purposes, access to ILETS shall be restricted to the following governmental agencies: (3-30-01)

- a. Criminal justice agencies; (3-30-01)
- b. Non-criminal agencies that provide computer services, dispatching support, or other direct support service to one (1) or more criminal justice agencies, and which have signed an ILETS-approved management control agreement with the criminal justice agency; (3-30-01)
- c. Non-criminal justice agencies with a statutory requirement to use information capabilities that may be available via ILETS, and use of terminal access will not adversely affect criminal justice agency users, and use of the terminal will be for the administration of criminal justice; and (3-30-01)
- d. Non-criminal justice agencies that provide information or capabilities needed by criminal justice agencies for a criminal justice purpose, and access or use of a terminal will improve the ability to provide such information or capabilities. (3-30-01)

02. Management Control Agreements. The management control agreement between a criminal justice agency and a non-criminal justice agency ~~will~~ grants to the criminal justice agency the authority to set and enforce: ~~(3-30-01)~~()

- a. Priorities of service; (3-30-01)
- b. Standards for the selection, supervision, and termination of personnel authorized to access ILETS; and (3-30-01)

c. Policies governing the operation of computers, circuits, and telecommunications terminals used to process, store, or transmit information to or receive information from ILETS. (3-30-01)

03. Board Approval. The board *shall* review all requests for access to ILETS and determine whether an agency meets the criteria for access and whether access is appropriate based on system resources. Approved non-criminal justice agencies may have access to ILETS information on a limited basis (for example, motor vehicle information only) as authorized by the board. (~~3-30-01~~)()

018. USER ACCESS FEES.

01. Payment Of Fees Required. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-13-02)

02. ILETS Network User Access Fees. The access fees approved by the board and to be collected quarterly in advance by the department are as follows: (3-13-02)

a. An agency at the county or municipal level *shall* pay an annual access fee of four thousand dollars (\$4,000) for each telecommunication line drop to the agency. (~~3-13-02~~)()

b. An agency at the state, federal, or tribal level *shall* pay an annual access fee of seven thousand dollars (\$7,000) for each telecommunication line drop to the agency. (~~3-13-02~~)()

03. Usage Fee. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network ~~must~~ pay quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency *shall* include the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (~~3-13-02~~)()

a. The usage fee ~~shall be paid~~ is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee
0 - .25 %	\$500
.26 - .50 %	\$1,000
.51 - .75 %	\$2,000
.76 - 1.0 %	\$4,000
1.01 - 1.50 %	\$6,000
1.51 - 2.0 %	\$9,000
2.01 - 5.0 %	\$13,500
> 5.01 %	\$20,250

(~~3-13-02~~)()

b. The department *shall will* conduct ~~an~~ audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee, ~~which will be~~ This fee is effective for two (2) years and begins with the quarterly statement ~~for the fee period~~ beginning October 1 of odd-numbered years. (~~3-13-02~~)()

c. If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access *shall will* be adjusted to reflect the combined historical usage. (~~3-13-02~~)()

d. A new agency approved for direct ILETS access that does not have historical usage ~~shall~~ will be assessed ~~by the department~~ an interim usage fee by the department pending the next audit of ILETS message traffic. The department ~~shall~~ sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal ~~to the board~~ the interim usage fee set by the department to the ILETS board.
(3-13-02)(_____)

e. As operator of ILETS, the department, in lieu of payment of fees, ~~shall~~ provides direct and in-kind support of network operations. The board ~~shall~~ reviews biennially the proportion of that support to the overall operating cost of the system.
(3-13-02)(_____)

04. Billing And Payment. The department ~~shall~~ mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day.
(3-13-02)(_____)

05. Sanctions For Delinquency. Any user agency that becomes delinquent in payment of assessed fees ~~shall be~~ is subject to sanctions under Section 028.
(3-13-02)(_____)

019. ADJUSTED ACCESS FEES DURING PILOT PROJECTS.

The board may adjust access fees of user agencies participating in pilot projects being conducted by the department in behalf of ILETS. The fee adjustment ~~shall be~~ is based on any cost savings, actual or anticipated, realized by the ILETS network.
(3-30-01)(_____)

020. USER RESPONSIBILITIES.

01. User Agreement. Any agency ~~using a terminal to with~~ access to ILETS, whether directly or through another agency, is responsible for adhering to all applicable ILETS rules and policies and must have signed an agreement with ILETS or an interface agency to that effect.
(3-30-01)(_____)

02. Record Validation. Any agency that enters information into ILETS or NCIC files is responsible for the accuracy, timeliness and completeness of that information. ILETS will send a record validation review list, regularly, to each agency. Validation is accomplished by reviewing the original entry and current supporting documents. Recent consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files, or other appropriate source or individual also is required with respect to the wanted person, missing person, and vehicle files. In the event the agency is unsuccessful in its attempts to contact the victim, complainant, etc., the entering authority must make a determination based on the best information and knowledge available whether or not to retain the original entry in the file. Validation procedures must be formalized and copies of these procedures must be on file for review during an ILETS or NCIC audit. When the agency has completed the validation ~~they must return a signed certification of process, the records must be modified to verify~~ their validity within an appropriate time as established by ILETS no later than thirty (30) days after receiving electronic notification.
(3-30-01)(_____)

03. Minimum Training. Each agency employee who operates a ~~terminal or~~ computer to access ILETS must complete ILETS training at a level consistent with the employee's duties. Each employee who operates a ~~terminal or~~ computer to access ILETS must be re-certified by the agency every two (2) years ~~per schedules and procedures as prescribed by ILETS~~.
(3-30-01)(_____)

04. Hit Confirmation. When another agency receives a positive record response (Hit) from ILETS or NCIC and requests confirmation of the status of the record (warrant, stolen vehicle, etc.), the agency responsible for entry of the record must respond within ten (10) minutes for urgent hit confirmation requests or within one (1) hour for routine hit confirmation requests, with an answer ~~indicating~~ that indicates the status of the record or ~~indicating~~ a time frame when the record status will be confirmed.
(3-30-01)(_____)

05. Terminal Agency Coordinators. The agency administrator of each agency with ~~terminal or~~ computer access to ILETS must designate one (1) or more terminal agency coordinators who ~~shall~~ will be the primary contact(s) for all matters relating to use of ILETS by the agency. A terminal agency coordinator must ~~complete ILETS training at the highest level required by any person in the agency~~ have sufficient authority to implement and enforce

necessary policy and procedures.

(3-30-01)()

06. Background Checks Of Terminal Operators Required. Policies for access to the FBI-NCIC system require background screening of all terminal operators with access to the NCIC system. For efficiency and consistency, ~~the key elements of~~ the NCIC background screening policies are also adopted for all ILETS access.

(3-30-01)()

021. INFORMATION ACCESS AND DISSEMINATION.

01. General Policy. Information is made available to ILETS users from various sources and agencies, including ILETS and other state justice information system files, motor vehicle departments, NCIC, and NLETS. Each user must observe any restrictions placed on the use or dissemination of information by its source. It is ILETS' responsibility to advise user agencies of any restrictions which apply to any information accessed via ILETS.

(3-30-01)

02. Criminal History Records. Criminal history information ~~on an individual~~ accessed via ILETS from a state or national computerized file ~~shall be made~~ is available only to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such information for use in connection with licensing applications, regulatory activities, or local or state employment, other than with a criminal justice agency.

(3-30-01)()

03. Administrative Messages. An administrative message (AM) is a free text message from one (1) agency to one (1) or more agencies. All administrative messages transmitted via ILETS must be by the authority of an authorized user and must relate to criminal justice purposes or matters of interest to the user community. Administrative messages sent within Idaho, either statewide, regionally or to individual terminal identifiers are subject to the following restrictions:

(3-30-01)

a. No messages supportive or in opposition to political issues, labor management issues, or announcements of meetings relative to such issues.

(3-30-01)

b. No messages supportive or in opposition of legislative bills.

(3-30-01)

c. No requests for criminal history record information.

(3-30-01)

022. -- 023. (RESERVED).

024. ILETS SECURITY.

01. General Policy. The data stored in the ILETS, NCIC, and other criminal justice information system files is documented criminal justice information. This information must be protected to ensure its integrity and its correct, legal and efficient storage, dissemination and use. It is incumbent upon an agency ~~operating an~~ accessing ILETS ~~directly terminal, or a terminal on~~ another system that has access to the ILETS network, to implement the procedures necessary to make the terminal access device secure from any unauthorized use and to ensure ILETS is not subject to a malicious disruption of service. ILETS ~~user~~ access agencies ~~shall~~ must participate in ILETS training and compliance activities to ensure that all agency personnel authorized to access the ILETS network are instructed in the proper use and dissemination of the information and that appropriate agency personnel are aware of security requirements and of the dangers to network integrity. ILETS retains the authority to disconnect ~~a user an~~ access agency or network connection when serious security threats and vulnerabilities are detected.

(3-30-01)()

02. Definitions. The following is a list of terms and their meanings as used in the ILETS security rule:

(3-30-01)

a. Computer interface capabilities means any communication to ILETS allowing an agency to participate in the system ~~using devices other than ILETS-provided terminal equipment.~~

(3-30-01)()

b. Firewall means a collection of components placed between two (2) networks that keep the host network secure by having the following properties:

(3-30-01)

- i. All traffic from inside the network to outside, and vice-versa, must pass through it; (3-30-01)
 - ii. Only authorized traffic is allowed to pass; and (3-30-01)
 - iii. The components as a whole ~~must be~~ are immune to unauthorized penetration and disablement. ~~(3-30-01)(_____)~~
 - c. ILETS ~~Security Officer (ISO)~~ Security Officer (ISO) ~~means is~~ the department staff member designated by the executive officer to monitor and enforce agency compliance with site and network security requirements. ~~(3-30-01)(_____)~~
 - d. Peer networks ~~means are~~ means computer interfaces between cooperative governmental agencies in Idaho where none of the participating entities exercise administrative or management control over any other participating entity. ~~(3-30-01)(_____)~~
 - e. ~~Primary site means~~ Interface agency is an agency that has management control of a computer system directly connected to ILETS. ~~(3-30-01)(_____)~~
 - f. Untrusted system ~~means is~~ means a system that does not employ sufficient hardware or software ~~integrity security~~ integrity security measures to allow its use for simultaneously processing a range of sensitive or confidential information. ~~(3-30-01)(_____)~~
- 03. ~~Site Security Interface Agency Agreements.~~** To ensure agencies having computer interface capabilities to ILETS are fully aware of their duties and of the consequences of failure to carry out those duties, a written and binding ~~security agreement shall~~ Interface Agency Addendum must exist between ILETS and all ~~primary sites interface agencies.~~ primary site interface agency is equally responsible for actions by secondary and affiliated systems connected through their site to ILETS. ~~Primary sites Interface agencies must put in place similar subsidiary security agreements with secondary and affiliated systems to protect its network and ILETS. A site security agreement shall be an addendum to the ILETS user agreement.~~ ~~(3-30-01)(_____)~~
- 04. ILETS Security Officer.** The ILETS Security Officer ~~shall be~~ is responsible for the following duties: ~~(3-30-01)(_____)~~
- a. Disseminating to user agencies copies of ILETS security policies and guidelines; (3-30-01)
 - b. Communicating to user agencies information regarding current perceived security threats and providing recommended measures to address the threats; (3-30-01)
 - c. Monitoring use of the ILETS network either in response to information about a specific threat, or generally because of a perceived situation; (3-30-01)
 - d. Directing an ~~primary site interface agency,~~ primary site interface agency, through its nominated contact, to rectify any omission in its duty of responsibility; ~~(3-30-01)(_____)~~
 - e. When an agency is unable or unwilling to co-operate, reporting the issue to the executive officer and initiating the procedure for achieving an emergency disconnection; and (3-30-01)
 - f. Provide support and coordination for investigations into breaches of security. (3-30-01)
- 05. Agency Security Contacts.** A terminal agency coordinator shall serve as that agency's security contact for ILETS, unless another individual is specifically selected for this purpose and approved by the ILETS Security Officer. ILETS primary sites shall ensure the agency's security contact, or another person or position designated in an incident contingency plan, can be contacted by the ILETS security officer at any time. (3-30-01)
- 06. Peer Networks.** The security responsibilities of the operators of peer networks connected to ILETS, with respect to their user organizations, are parallel to those of ILETS user organizations in respect to their individual users. The ILETS Security Officer shall ensure that a written agreement exists between ILETS and an

~~primary site~~ interface agency, signed by the agency heads, that embodies these principles. (3-30-01)()

07. Physical Security Standards. ~~User~~ Interface agencies will observe standards and procedures to ensure security of the physical premises and computing equipment. The minimum standards and procedures include the following: (3-30-01)()

a. Access to computer rooms will be limited to staff who require access for the normal performance of their duties. (3-30-01)

b. Electrical power protection devices to suppress surges, reduce static, and provide battery backup in the event of a power failure will be used as necessary. (3-30-01)

c. Computer system backups shall be stored in a secure location with restricted access. (3-30-01)

d. Network infrastructure components will be controlled with access limited to ~~only~~ support personnel with a demonstrated need for access. (3-30-01)()

e. Physical labeling of infrastructure components will be done to assist in proper identification. Additionally, all components will be inventoried at regular intervals for asset management and physical protection. (3-30-01)

f. An interface agency must create and enforce a password policy in which the agency is responsible for assigning ILETS users a unique password. The password policy must require that a new password be initiated by the user or agency every ninety (90) days. ()

08. Network Security Standards. User agencies ~~shall~~ must exercise appropriate security precautions when connecting ILETS and computer systems linked to ILETS with external untrusted systems. The primary objective of such precautions is to prevent unauthorized access to sensitive information while still allowing authorized users free access. The minimum standards and procedures include the following: (3-30-01)()

a. Agencies ~~shall~~ must routinely audit for and remove unused or unneeded services/accounts, review accounts periodically, and enforce aggressive and effective password strategies. (3-30-01)()

b. Agencies ~~shall~~ must ensure that the software security features of the networks they manage are installed and functioning correctly. (3-30-01)()

c. Agencies ~~shall~~ must monitor network security on a regular basis. Adequate information concerning network traffic and activity ~~will~~ must be logged to ensure that breaches in network security can be detected. (3-30-01)()

d. Agencies ~~shall~~ must implement and maintain procedures to provide the ILETS network adequate protection from intrusion by external and unauthorized sources. (3-30-01)()

e. No computer connected to the network can have stored, on its disk(s) or in memory, information that would permit access to other parts of the network. For example, scripts used in accessing a remote host may not contain passwords. (3-30-01)

f. No connection to ILETS may be established utilizing dial-up communications. Asynchronous communications connections should be limited and tightly controlled as they pose a serious risk because they can circumvent any security precaution enacted to protect networks from untrusted sources. (3-30-01)

g. Network management protocols ~~shall~~ must be limited to internal or trusted networks. (3-30-01)()

h. Any system having direct or indirect access to the Internet via their computer network ~~shall~~ must have in place services that allow no access to ILETS from the Internet. Organizations with large distributed Wide Area Networks connecting many remote sites may choose to incorporate many security layers and a variety of

strategies. These strategies ~~shall~~ must incorporate the implementation of a firewall to block network traffic, and restriction of remote user access. (3-30-01)(____)

i. Agencies accessing ILETS directly or through another agency, must insure that all telecommunications infrastructure meets the FBI CJIS Security Policy for encryption standards. (____)

i. No routing or IP Network Translations are to be performed on individual access devices. All routing and translation must be performed on a router or firewall device. (____)

025. -- 027. (RESERVED).

028. USER AGENCY SANCTIONS.

01. Review Of Violations. The board ~~shall~~ reviews violations of ILETS rules and may impose appropriate sanctions on ~~user~~ access agencies. (3-30-01)(____)

02. Objective Of Sanctions. The objectives of the sanction procedure ~~shall be~~ are as follows: (3-30-01)(____)

a. To ensure the security, integrity, and financial stability of the ILETS. (3-30-01)

b. To create an awareness among ~~user~~ access agencies of the importance of following rules, regulations, and procedures in order to minimize the risk to liabilities that may be incurred by misuse of the system and access to its information. (3-30-01)(____)

03. Class Of Sanctions. Sanctions ~~shall be~~ are based upon the class of violation, any previous violations, and any exposure to criminal and civil liabilities that the violation might place on the system, its officials, and the offending agency. Violations ~~shall be~~ are classed as either administrative (minor) or security (serious) violations. Security violations ~~being~~ are defined as ones which ~~has~~ have or could result in access of ILETS data by unauthorized individuals. All other violations are classed as administrative. (3-30-01)(____)

04. Form Of Sanctions. When imposing sanctions, the board ~~shall~~ considers the severity of the violation, the violation type, either administrative or security, and previous sanctions issued, ~~if any~~. The board may impose as sanctions one (1) or more of the following: (3-30-01)(____)

a. Written warning. (3-30-01)

b. Written notice of violation. (3-30-01)

c. Written notice of probation. (3-30-01)

d. Written notice of temporary suspension. (3-30-01)

e. Written notice of permanent suspension. (3-30-01)

05. Effective Date Of Sanctions. Temporary or permanent suspension of service will not begin, unless an emergency exists, until fifteen (15) days after the agency head has received written notice by certified mail or personal service. (3-30-01)

06. Reinstatement. An agency placed on permanent suspension may apply to the board for reinstatement. (3-30-01)

029. -- 999. (RESERVED).

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - RULES GOVERNING PUBLIC SAFETY

DOCKET NO. 13-0102-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 16, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-103, -104(b), and -412, 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 15, 2003.

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:

Requires a parent or designated adult to attend the live firing portion of hunter education with the student; defines the term 'accompany' to mean within normal conversational distance; corrects an obsolete reference to the course fee; and adds required sections to the chapter.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to hunter education students and to the hunter education program.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to continue the program, and the lack of identifiable representatives of affected interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ron Fritz (208) 287-2884.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 27th day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division / Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
Fax (208)3342148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-0301

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting and archery. (12-16-02)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.02.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.02, "Rules Governing Public Safety". (12-16-02)T

02. Scope. These rules establish criteria for education programs in hunting and archery. (12-16-02)T

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of these rules. (12-16-02)T

003. ADMINISTRATIVE APPEAL.

All contested cases shall be governed by the provisions of IDAPA 13.01.01, "Rules of Practice and Procedure of the Idaho Fish and Game Commission," and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". 12-16-02)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (12-16-02)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Department of Fish and Game is in Boise, Idaho. The office is located at 600 South Walnut, Boise, Idaho, and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is P.O. Box 25, Boise, Idaho 83707. (12-16-02)T

010. DEFINITIONS.

01. Accompanied. The term "accompanied" as used in the requirement for a Youth Hunter Education Graduate License holder or Youth Small Game License holder shall mean close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (12-16-02)T

~~000~~11. -- 099. (RESERVED).

100. HUNTER EDUCATION.

01. Mandatory Hunter Education Program. All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. (7-1-93)

02. Fees. A fee ~~of two dollars (\$2)~~ as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. ~~(7-1-93)~~(12-16-02)T

03. Parent To Attend Live Fire Exercise With Student. For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend the Hunter Education Live Fire Exercise with the student. Preferably, the adult attending the live fire exercise should be the same adult who will accompany the student into the field while hunting. This requirement is mandatory for successful completion of the Hunter Education Course. (12-6-02)T

101. -- 999. (RESERVED).

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 16, 2002, January 21, 2003, April 28, 2003, and July 14, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 36-103 and -104(b), 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 15, 2003.

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:

Sections 303 and 304. Allow physician assistants and nurse practitioners to sign the Handicapped Vehicle Shooting Permit application and Handicapped Archery Permit application in addition to physicians. This will allow affected persons to complete the application process in a timely and less expensive manner.

Sections 500, 506, and 600. Annual adjustment of nonresident deer and elk tag quotas, and outfitter set-aside tag quotas. Implement a controlled hunt drawing for Southeast Idaho Deer Tags because of steady nonresident hunter demand for a limited number of tags. Allow the Department to use a waiting list to distribute unsold outfitter allocation tags. Exempt the statutorily created Junior Mentored Deer Tag from being counted for the nonresident deer and elk tag quotas.

Section 602. Establish a "raincheck" and refund procedure for military personnel who are deployed to Operation Iraqi Freedom and may have purchased Idaho hunting licenses and tags for the 2003 season.

Sections 700 and 800. Remove the once-in-a-lifetime limit for the special lottery and auction Bighorn Sheep Tags to increase the marketability of these special tags.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Section 303 and 304. The temporary rule confers a benefit to handicapped persons.

Sections 500, 506, and 600. The temporary rule confers a benefit to sportsmen and outfitters by allowing the orderly sale of deer and elk tags for the next hunting season.

Section 602. The temporary rule confers a benefit to military personnel who are serving their country. This rule will allow affected military personnel to receive a refund for hunting licenses and tags purchased, or exchange the licenses or tags for next year.

Sections 700 and 800. The temporary rule confers a benefit to sportsmen and outfitters by allowing an increased number of potential hunters to purchase lottery tickets or bid on these tags for the next hunting season.

Section 303 and 304. The temporary rule confers a benefit to handicapped persons.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING:

Sections 303 and 304. Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to allow for addressing the concerns of handicapped persons, and the lack of identifiable representatives of affected interests.

Sections 500, 506, and 600. Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to allow for tag sales and the determination that affected interests are not likely to reach a consensus on a proposed rule.

Section 602. Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to allow for addressing the concerns of affected military personnel, and the lack of identifiable representatives of affected interests.

Sections 700 and 800. Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to allow for tag sales and the determination that affected interests are not likely to reach a consensus on a proposed rule. The Department did consult with the Foundation for North American Wild Sheep on this temporary and proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Barton (208) 287-2800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho, 83707
(208)334-3715, Fax (208)3342148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0301

303. HANDICAPPED PERSONS MOTOR VEHICLE HUNTING PERMITS.

01. Applications For Handicapped Motor Vehicle Hunting Permits. (7-1-93)

a. Applications for handicapped motor vehicle hunting permits shall be on a form prescribed by the Department or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, except for blindness, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. (5-3-03)

b. Individuals using the department form for a handicapped motor vehicle must complete and sign the application form. Nonresident applicants must have their signature notarized. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse

practitioner stating which of the criteria set forth in Idaho Code, Section 36-1101 qualifies the applicant and why. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding and firing, without assistance from other persons, legal firearms or archery equipment. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician's, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for short-term or long-term disability on the application. If the disability is short term and physical mobility is expected to improve, the physician, physician assistant, or nurse practitioner must include a date when the disability is expected to end. ~~(5-3-03)~~(7-14-03)T

02. Handicapped Motor Vehicle Hunting Permits. (7-1-93)

a. Handicapped motor vehicle hunting permits shall be issued only by the Director of the Department or his representative and shall expire no later than December 31 of the fifth year following the date of issuance. (5-3-03)

b. The permit shall be prominently displayed on any vehicle from which the person is hunting. Where applicable, the permit shall be displayed on the driver's side of the dashboard of the parked vehicle, suspended from the rearview mirror, or otherwise displayed so as to be in plain view of any person looking through the windshield of the vehicle. (7-1-93)

304. HANDICAPPED ARCHERY PERMIT.

01. Applications For Handicapped Archery Permits. (3-20-97)

a. Applications for handicapped archery permits shall be on a form prescribed by the Department. Only eligible applicants may submit such applications. (3-20-97)

b. Applicants shall sign the application. Nonresident applicants must have their signature notarized. Each application shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating that the applicant has a permanent disability whereby he does not have use of one (1) or both of his arms or hands. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding and firing, without assistance from other persons, a crossbow. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician's, physician assistant, or nurse practitioner medical license must accompany the application. ~~(7-1-98)~~(7-14-03)T

02. Handicapped Archery Permits. (3-20-97)

a. Handicapped archery permits shall be issued only by the Director of the Department and shall expire on December 31 of the fifth year following the date of issuance. (3-20-97)

b. The handicapped archery permit shall be carried on the person of anyone participating in an archery only season with the use of a crossbow and produced upon request on an officer. (3-20-97)

c. The handicapped archery permit shall allow the holder thereof to participate in an archery only hunt with the use of a crossbow. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

500. NONRESIDENT DEER AND ELK TAG OUTFITTER SET-ASIDE.

01. Tags. The following number of nonresident deer tags and nonresident elk tags shall annually be set aside and reserved for sale to persons who have entered into an agreement to utilize the services of an outfitter who is licensed under Chapter 21, Title 36, Idaho Code. For the ~~1997~~ each Hunting Season: ~~(7-1-99)~~(12-16-02)T

- a. One thousand nine hundred (1,900) deer tags (regular or Clearwater); (7-1-99)
- b. ~~One hundred thirty~~ Eighty-five (13085) S.E. Idaho Area deer tags; (~~7-1-98~~)(12-16-02)T
- c. Two thousand ~~two~~ four hundred (2,240) elk tags (A or B tags for all zones ~~except the Panhandle zone~~); (~~7-1-99~~)(12-16-02)T
- ~~d. Two hundred (200) Panhandle zone elk tags (A or B tags); (7-1-99)~~

02. Restrictions. These tags shall be sold on a first-come, first-serve basis through June 30 of each year. Application for purchase of these tags shall be made by the outfitter for the nonresident on a form prescribed by the Department. The application shall be accompanied by the appropriate license fees and a certification by the outfitter that the nonresident hunter has a contract to hunt with the outfitter making application. (7-1-93)

03. Unsold Tags. Any tags not sold by July 1 of each year shall be sold by the Department to nonresidents on a first-come, first serve basis. If there is a waiting list of individuals desiring a tag for the species available, those individuals will be first served. Application shall be made only to the Headquarters office of the Department of Fish and Game in Boise, Idaho. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

506. DEER AND ELK OUTFITTER ALLOCATED TAG.

01. Allocated Tags. *The following number of* deer and elk tags shall annually be allocated for sale to persons who have entered into a signed agreement to utilize the services of an outfitter who is licensed in that zone under Title 36, Chapter 21, Idaho Code.

FOR THE 2001 ELK HUNTING SEASON				
Zone	Units	Dates, Inclusive	Total Tags	Outfitter Allocation
<i>Lolo B Tags</i>	<i>10, 12</i>	<i>Oct 10 – Nov 3</i>	<i>1600</i>	<i>236</i>
<i>Selway B Tags</i>	<i>16A, 17, 19, 20</i>	<i>Sep 15 – Sep 30 Nov 1 – Nov 18</i>	<i>1255</i>	<i>356</i>
<i>Middle Fork A Tags</i>	<i>20A, 26, 27</i>	<i>Oct 1 – Oct 31</i>	<i>1551</i>	<i>209</i>
<i>Middle Fork B Tags</i>	<i>20A, 26, 27</i>	<i>Sep 15 – Sep 30 Nov 1 – Nov 18</i>	<i>1636</i>	<i>444</i>
<i>Boise River B Tags</i>	<i>39</i>	<i>Oct 15 – Oct 24</i>	<i>3,300</i>	<i>18</i>

(~~3-15-02~~)(12-16-02)T

02. Distribution Of Allocated Tags. Allocated tags shall be sold by the Department, as designated by IDAPA 25.01.01, “Rules of Idaho Outfitters and Guides Licensing Board,” Section 057, to hunters with signed agreements with licensed outfitters in those zones with a cap on the number of tags sold. In zones where resident and nonresident deer and/or elk tags are issued by lottery, allocated tags will be issued by lottery. Application for the purchase of allocated tags shall be made by the outfitter for the hunter on a form prescribed by the Department. The application shall be accompanied by the appropriate license fees and a certification by the outfitter that the hunter has a signed agreement to hunt with the outfitter making application. (7-1-99)

03. Designated Buyers. Purchasers of allocation tags who return their unused tag and a notarized

affidavit stating that the tag buyer has not hunted may designate another person to purchase a replacement tag. If the original buyer does not make a designation, the outfitter may make the designation. The designated buyer must pay the regular fee for the replacement tag. (7-1-99)

04. Unsold Tags. Any allocation tags not sold by August 1 of each year shall be sold by the Department ~~on a first come, first serve basis. The Department may use through~~ a waiting list methodology ~~to issue unsold tags. Applications shall be made only to the headquarters office of the Idaho Department of Fish and Game in Boise, Idaho.~~ (7-1-99)(12-16-02)T

507. -- 599. (RESERVED).

600. NONRESIDENT DEER AND ELK TAG QUOTAS.

01. Tag Quotas. The following number of deer tags and elk tags shall be set aside annually and reserved for sale to nonresidents: (3-20-97)

- a. Twelve thousand eight hundred (12,800) regular or Clearwater deer tags; (7-1-99)
- b. ~~Eleven~~ Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones ~~except the Panhandle zone;~~ (7-1-99)(12-16-02)T
- c. ~~One thousand eight hundred fifteen (1,815) Panhandle zone elk tags; and~~ (7-1-99)
- d. One thousand two hundred (1,200) S.E. Idaho area Deer tags. (7-1-98)

02. Exceptions. Sales of nonresident deer and elk tags to the following persons shall not be counted in the quota: (7-1-93)

- a. Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (7-1-93)
- b. Designated Buyers: Nonresident tag buyers who return their unused nonresident deer or elk tag and a notarized affidavit stating that the tag buyer has not hunted may designate another nonresident to purchase an additional tag. If the original buyer does not make a designation and has retained an outfitter or guide, the outfitter or guide may make the designation. The designated buyer must pay the regular fee for the replacement tag. If no designation is made by either the original buyer or the outfitter or guide, the Department may sell the replacement tag on a first-come, first-serve basis. (7-1-93)
- c. Successful nonresident controlled hunt applicants who have not purchased a tag as of the date of the controlled hunt drawing. (7-1-93)
- d. Junior mentored tag holders. (12-16-02)T

03. Refunds. The fee for any nonresident license (as defined in I.C. 36-202(z)) shall not be refunded for any reason except as follows. (7-1-98)

- a. Hunting license and general season deer and elk tag refunds due to death, illness/injury or military deployment of licensee. Non-resident general season deer or elk tag fees and prerequisite hunting license fee may be refunded for death of licensee; illness or injury of licensee which totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict. Refund must be substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or other similar substantiating documents. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license less all issuance fees and a fifty dollar (\$50) processing fee. The refund request must be postmarked on or before December 31 of the calendar year in which the license and tags were valid. (7-1-98)
- b. General season deer and elk tag refunds for other than death, illness/injury, or military deployment

of licensee. Non-resident general season deer or elk tag fees may be refunded for any reason other than death of the licensee; illness or injury of licensee which totally disables the licensee for the entire length of all applicable seasons; or military deployment of licensee due to an armed conflict. The request for the refund must be postmarked in the year in which the tag is valid. The hunting license fee will not be refunded. The refund will be based on the following sliding scale as a percent of the deer or elk tag fee.

Postmarked	Percent of Fee Refunded
Before April 1	75%
in April through June	50%
in July and August	25%
September through December	0%

(7-1-98)

c. Department Error. The department determines that a department employee made an error in the issuance of the license. (7-1-98)

d. Submission Requirements. All refund requests must be in writing and be accompanied with the original copy of the license or tag. (7-1-98)

e. Effective. These changes will be effective with the 1997 licenses and tags. (7-1-98)

04. Sale Of Unsold Nonresident Deer And Elk Tags To Residents. Any unsold nonresident deer or elk tags may be sold to residents and to nonresidents as a second tag, at the nonresident deer or elk tag price, beginning September 1. All privileges and restrictions associated with the use of the nonresident deer or elk tag will apply equally to residents who purchase a nonresident deer or elk tag. (3-15-02)

05. S.E. Idaho License/Tag Application And Drawing. (12-16-02)T

a. Nonresidents must submit application to the Idaho Department of Fish and Game headquarters license section to be eligible to receive an Idaho S.E. deer tag. The application period will be for the two (2) consecutive months from December 1 through January 31, and received by the license section no later than February 5 for the current year's license. The Idaho Department of Fish and Game is not responsible for lost or late applications. (12-16-02)T

b. Applications must be submitted on a department-approved form. (12-16-02)T

c. Only those eligible to purchase an Idaho hunting license at the time of application are eligible to apply for the S.E. deer tag. (12-16-02)T

d. A nonrefundable application fee of six dollars and fifty cents (\$6.50) must be submitted with the application. (12-16-02)T

e. At the time of application, the applicant must submit the nonrefundable application fee, the hunting license fees (if applicable), and the fees for the S.E. deer tag. Those successful in the drawing will receive the appropriate hunting license (if applicable) and the S.E. deer tag. Those who are unsuccessful will receive a refund of the license fee (if applicable) and the S.E. deer tag fees. (12-16-02)T

f. Group applications may be submitted. A group application may consist of up to four (4) individuals. All required information must be submitted in the same envelope to be considered as a group application. If a group application is selected in the random drawing, then each applicant will receive a hunting license (if applicable) and a S.E. deer tag. (12-16-02)T

g. Applications received after the deadline will be processed through the drawing but will be ineligible to draw. The appropriate license and tag fees will be refunded. (12-16-02)T

h. Applications with insufficient fees will be processed through the drawing but will be ineligible to draw. The appropriate license and tag fees will be refunded (if applicable). (12-16-02)T

i. Computer drawing: To ensure fairness to all applicants, the drawing will be conducted using the existing department controlled hunt drawing processes. A random computer selection will determine successful applicants. If the applicant is successful, the license (if applicable) and deer tag will be issued and mailed to the customer within fifteen (15) days of the drawing date. License (if applicable) and tag fees will be refunded to unsuccessful applicants in the form of a state warrant. All refunds will be issued in the name of the applicant, regardless of who submitted the original payment for the application. (12-16-02)T

j. Those applying for the S.E. deer tag will not affect their ability to apply for controlled hunts. (12-16-02)T

k. Those unsuccessful in drawing a S.E. deer tag will be placed on a waiting list randomly in case the department receives returned unused tags for refunds or controlled hunt exchanges. These tags will be sold to the individuals on the list in order of standing on the waiting list. (12-16-02)T

l. All other existing refund rules apply to those who have successfully drawn and have been issued the S.E. Idaho deer tag. (12-16-02)T

(BREAK IN CONTINUITY OF SECTIONS)

602. SPECIAL OPERATION IRAQI FREEDOM REFUND AND RAIN CHECK.

01. 2003 Special Refund And Rain Check Rule. This special refund and rain check rule applies only to the 2003 hunting season. Because of military deployment to Operation Iraqi Freedom, some hunters will be unable to hunt big game animals for which they purchased tags in the state of Idaho. (4-28-03)T

02. 2004 Special Refund And Rain Check Eligibility. Hunters who have purchased tags and who can show in good faith they could not participate in hunting activities due to military deployment for Operation Iraqi Freedom will be eligible for a refund or rain check for license and tags for the 2004 hunting season as outlined in this rule. (4-28-03)T

03. General Season Tag. Holders of a general season tag for deer or elk may request: (4-28-03)T

a. A refund of the hunting license and tag fee; (4-28-03)T

b. A rain check for a hunting license and same tag for the 2004 hunting season; or (4-28-03)T

c. An exchange in 2003 for a tag in another zone or area so long as tags are available in that area or zone. (4-28-03)T

04. Controlled Hunt Permit And Tag. Holders of a controlled hunt permit and tag for deer, elk, or antelope may request: (4-28-03)T

a. A refund of the hunting license, controlled hunt permit, and tag fee; (4-28-03)T

b. A rain check for a hunting license, controlled hunt permit, and tag for the same controlled hunt in the 2004 hunting season; or (4-28-03)T

c. An exchange in 2003 for a hunting license and a general season tag in another zone or area so long

as tags are available in that area or zone. (4-28-03)T

05. Nonresident Bear Or Mountain Lion Tags. Holders of nonresident bear or mountain lion tags may request: (4-28-03)T

a. A refund of the hunting license and tag fee; or (4-28-03)T

b. A rain check for a hunting license and tag for the 2004 hunting season. (4-28-03)T

06. Moose, Bighorn Sheep, Or Mountain Goat Controlled Hunt Permits. Holders of moose, bighorn sheep, or mountain goat controlled hunt permits may request: (4-28-03)T

a. A refund of the hunting license, controlled hunt permit, and controlled hunting tag fee; or (4-28-03)T

b. A rain check for a hunting license, controlled hunt permit, and controlled hunt tag for the 2004 hunting season. (4-28-03)T

07. Ineligible To Request Tag Or Permit Refund Or Rain Check. If the person hunts a species of wildlife before requesting a refund or rain check, then the tag or permit fee for that species will not be refunded or eligible for a rain check for the 2004 season. (4-28-03)T

08. Ineligible To Request License Fee Refund Or Rain Check. If the person hunts for any species during the 2003 season before requesting a refund or rain check, then the hunting license fee will not be refunded or eligible for a rain check for the 2004 season. (4-28-03)T

09. Rain Check Requests Must Be For Same Species. All rain check requests must be made for the same species. For example, a deer tag will not be eligible for a rain check of an elk tag in the 2004 season. (4-28-03)T

10. Refunds Will Be For The Amount Paid. All refunds will be for the amount the person paid for the hunting license or tag. (4-28-03)T

10. Use Of Department-Approved Form For Rain Check or Refund Request. Resident and nonresident military personnel who have purchased general season tags or controlled hunt tags and are unable to participate in any hunting activities due to military deployment must submit a request for a refund or rain check on the department-approved form (found on Idaho Fish and Game website www2.state.id.us/fishgame) by January 1, 2004, along with a copy of their deployment papers, or a letter from their commanding officers stating the dates the individual was deployed for duty in Operation Iraqi Freedom. Those requests received after this date will not be eligible for the special refund or rain check. (4-28-03)T

6023. -- 699. (RESERVED).

700. SPECIAL BIGHORN SHEEP PERMIT/TAG.

01. Eligibility. In order to be eligible to bid on the special bighorn sheep tag, a person must: (3-15-02)

a. ~~Be~~ be eligible to purchase an Idaho hunting or combination license; ~~and~~ (3-15-02)(1-21-03)T

b. ~~Not have killed both a California and a Rocky Mountain bighorn sheep.~~ (3-15-02)

02. Validity Of Tag. The Special Bighorn Sheep Permit/Tag shall be valid ~~for use only as follows:~~ (3-15-02)

a. ~~If the successful bidder has killed a California bighorn sheep south of Interstate Highway 84 since 1974, the tag shall be valid ONLY for the taking of Rocky Mountain bighorn sheep north of Interstate 84, EXCEPT~~

~~that the Special Bighorn Permit/Tag shall be valid~~ in Unit 11 only during odd-numbered years and during even-numbered years when the Bighorn Sheep Lottery Permit/Tag holder chooses not to hunt in Unit 11.

~~(3-15-02)(1-21-03)T~~

~~**b.** If the successful bidder has killed a Rocky Mountain bighorn sheep north of Interstate Highway 84 since 1974, the tag shall be valid ONLY for the taking of California bighorn sheep south of Interstate 84. (3-15-02)~~

~~**c.** If the successful bidder has NOT killed either subspecies of bighorn sheep in Idaho, the tag shall be valid during any controlled hunt open for either California or Rocky Mountain bighorn sheep. (3-15-02)~~

03. License And Permit. A hunting license and permit will be provided to the successful bidder from the net proceeds of the auction. (7-1-93)

04. Application Of Big Game Rules. All rules governing the Taking of Big Game Animals, IDAPA 13.01.08, shall apply to the eligible and successful bidders other than as specified herein. (7-1-93)

a. No successful bidder shall be eligible to apply for a bighorn sheep controlled hunt permit tag the same year the bidder is issued a Special Bighorn Sheep Permit/Tag. (3-30-01)

b. A person receiving a Special Bighorn Sheep Permit/Tag, but who is unsuccessful in taking a bighorn sheep, shall be eligible to bid the following year for another Special Bighorn Sheep Permit/Tag. (3-15-02)

c. A person successful in taking a bighorn sheep with a special bighorn sheep tag shall be eligible to bid the following year ~~for the other subspecies of bighorn sheep.~~ ~~(3-15-02)(1-21-03)T~~

701. -- 799. (RESERVED).

800. BIGHORN SHEEP LOTTERY PERMIT/TAG.

01. Eligibility. (7-1-93)

a. In order to win and be issued the Bighorn Sheep Lottery Permit/Tag, a person must be eligible to purchase an Idaho hunting or combination license EXCEPT that the Lottery Permit/Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the Special Bighorn Sheep Permit/Tag holder chooses not to hunt in Unit 11. (3-15-02)

b. If any person wins the Bighorn Sheep Lottery Permit/Tag and has already been drawn for a bighorn sheep controlled hunt permit for the same year, the controlled hunt permit shall be returned to the Department and voided and the permit/tag fees refunded. The lottery tag will be valid to hunt bighorn sheep that year. (7-1-93)

02. Validity Of Tag. The Bighorn Sheep Lottery Permit/Tag shall be valid ~~for use only as follows:~~ ~~(3-15-02)~~

~~**a.** If the lottery tag winner has killed a California bighorn sheep south of Interstate Highway 84 since 1974, the tag shall be valid ONLY for the taking of Rocky Mountain bighorn sheep north of Interstate 84 EXCEPT that the Lottery Permit/Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the Special Bighorn Sheep Permit/Tag holder chooses not to hunt in Unit 11. (3-15-02)(1-21-03)T~~

~~**b.** If the lottery tag winner has killed a Rocky Mountain bighorn sheep north of Interstate Highway 84 since 1974, the tag shall be valid ONLY for the taking of California bighorn sheep south of Interstate 84. (3-15-02)~~

~~**c.** If the successful bidder has NOT killed either subspecies of bighorn sheep in Idaho, the tag shall be valid during any controlled hunt open during the year of issue, for either California or Rocky Mountain bighorn sheep. (3-15-02)~~

03. Permit. A permit and tag will be provided to the lottery tag winner from the net proceeds of the lottery. (7-1-93)

04. Application Of Big Game Rules. All Rules Governing the Taking of Big Game Animals shall apply to the eligible ticket purchasers and lottery tag winner, other than as specified herein. (7-1-93)

~~**a.** No lottery tag winner shall have killed both a California and a Rocky Mountain bighorn sheep.~~
~~(3-15-02)~~

ba. A person receiving a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year for another bighorn sheep lottery tag. (3-30-01)

eb. A person successful in taking a bighorn sheep with a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year ~~for the other subspecies of bighorn sheep.~~ (3-15-02)(1-21-03)T

dc. Any person who wins a Bighorn Sheep Lottery Permit/Tag, and who is otherwise eligible to apply for a deer, elk or antelope controlled hunt permit, shall be allowed to apply for a permit for those species during the same year the Bighorn Sheep Lottery Permit/Tag is valid. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 17, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 36-103 and -104(b), 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 15, 2003.

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:

Apply the 10% Nonresident controlled hunt permit limitation to all hunts for a species, instead of to individual hunts. Establish an ATV or motorized vehicle use restriction as an aid to hunting in identified hunts in certain big game management units. Also, establish a process for issuing late mandatory harvest reports and requiring filing with the Department.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to sportsmen by clarifying the 10% Nonresident controlled hunt permit limitation, addressing sportsmen requests to limit motor vehicle use as an aid to hunting, and establishing a process for filing a late mandatory harvest report.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking to address the concerns for the current year's hunting seasons, and the determination that affected interests are not likely to reach a consensus on a proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Compton (208) 287-2756 or Steve Barton (208) 287-2800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho, 83707
(208)334-3715, Fax (208)3342148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0301

260. PERMITS FOR CONTROLLED HUNTS.

01. Use Of Controlled Hunt Permits. No person may hunt in any controlled hunt without having a valid controlled hunt permit in possession. (7-1-93)

a. A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

b. In the event a permit is issued based on erroneous information, the permit will be invalidated by the Department and may NOT be used. The Department will notify the permittee of the invalidation of the permit. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)

c. Any person who receives a controlled hunt permit and tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer. (3-20-97)

d. Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)

e. Any person who receives a controlled hunt permit for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)

f. Any person who receives a combination controlled hunt permit/tag for antelope is prohibited from hunting in any archery antelope hunt. The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)

g. Any person who receives a spring controlled hunt permit for black bear is prohibited from hunting in any other spring bear hunt - April 15 to June 30. (7-1-99)

h. Any person who receives a fall controlled hunt permit for black bear is prohibited from hunting in any other fall bear hunts--September 15 to October 31. (10-26-94)

02. Nonresident Permit Limitations. (3-17-03)T

a. In controlled hunts with ten (10) or fewer permits, not more than one (1) nonresident permit will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits, not more than ten percent (10%) of the permits will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt only. (~~7-1-98~~)(3-17-03)T

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-17-03)T

c. For each species, the total number of outfitter allocated controlled hunt permits shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-17-03)T

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) or Two-day (2) Deer License (Type 132) may not apply for any controlled hunt. (10-26-94)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit for two (2) years. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat permit for two (2) years. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits nor Landowner Preference Permits. EXCEPT all successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope/deer/elk tags to hunt in any open general and/or controlled antelope, deer or elk hunt in the following hunting season. (3-15-02)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, or a designated depredation or extra tag hunt for deer, elk or antelope. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in first-come, first-served deer, elk and antelope controlled hunt permit sales. (10-26-94)

d. Any person who has killed a California bighorn ram, Rocky Mountain bighorn ram or a moose on any controlled hunt may not apply for a permit for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit for five (5) years. The harvest of a bighorn ewe does not make the permittee ineligible to apply for a permit to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit. (7-1-93)

h. Any person who has killed a moose in Idaho may not apply for a moose permit. (4-5-00)

i. Any person holding a Nonresident Hunting License (Type 202) or a duplicate thereof may not apply for a moose permit. (7-1-93)

j. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

k. Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)

l. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs". (7-1-99)

04. Applications. Individual applications or group applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (10-26-94)

a. Moose, bighorn sheep, and mountain goat - April 30. (7-1-93)

b. Deer, elk, antelope and fall black bear - May 31. (3-20-97)

c. Spring black bear - February 16. (3-20-97)

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt permit/extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (10-26-94)

b. Only one (1) controlled hunt permit/extra tag will be issued for each person on any application submitted. (10-26-94)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt permit/tag hunts or controlled hunt permit/extra tag hunts. (10-26-94)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is five dollars (\$5) per person per hunt, for deer, elk, antelope, moose, bighorn sheep, mountain goat, black bear, and lion, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, antelope, black bear, or mountain lion. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a permit tag in the mail. (7-1-98)

e. Any controlled hunt permits, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold forty five (45) days following the close of each respective controlled hunt drawing by any Point-of-Sale vendor on a first-come, first-served basis UNLESS such day is a Sunday, in which case the permits will go on sale the next legal business day. A controlled hunt permit and tag will be issued to successful applicants. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-15-02)

f. A "group application" for deer, elk, and antelope is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (10-26-94)

g. A "group application" for moose, bighorn sheep, mountain goat, and black bear is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (10-26-94)

h. If a group application exceeds the number of permits available in a hunt that group application will not be selected for that hunt. (7-1-98)

i. Landowner permission hunt permits will be sold first-come, first-served basis at the Nampa, McCall and Headquarters offices of the Idaho Department of Fish and Game after July 15. (7-1-98)

06. Refunds Of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope. (3-30-01)

02. Bows, Crossbows, Arrows, Bolts, Chemicals Or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteen-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

c. With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

- d.** With arrows or bolts having expanding broadheads. (7-1-93)
- e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)
- f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)
- g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
- h.** With any compound bow with more than sixty-five percent (65%) let-off. (7-1-93)
- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than four hundred (400) grains. (3-20-97)
- j.** With an arrow less than twelve (12) inches from the broadhead to the nock inclusive. (3-30-01)
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an ARCHERY ONLY season, with any firearm, crossbow (except disabled archers), or other implement other than a longbow, compound bow, or recurve bow, or:
(3-20-97)

 - i. With any device attached that holds a bow at partial or full draw. (7-1-93)
 - ii. With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a TRADITIONAL ARCHERY ONLY season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or:
(3-15-02)

 - i. With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
 - ii. With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)

 - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, antelope, or mountain lion, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-93)
 - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
 - c.** During a MUZZLELOADER ONLY season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which:
(7-1-93)

 - i. Is at least forty-five (.45) caliber for deer, antelope or mountain lion or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (7-1-93)
 - ii. Is capable of being loaded only from the muzzle. (7-1-93)
 - iii. Is equipped only with open or peep sights. (7-1-93)
 - iv. Is loaded only with black powder or, Pyrodex or other synthetic black powder. (3-20-97)
 - v. Is equipped with no more than two (2) barrels. (7-1-93)

- vi. Is loaded only with a projectile of at least four hundred twenty-eight (.428) caliber. (3-20-97)
- vii. Is equipped only with flint or percussion cap. (3-20-97)
- d.** During a TRADITIONAL MUZZLELOADER ONLY season, with any firearm other than a muzzleloader rifle or musket with an exposed hammer that pivots: (3-15-02)
 - i. Is loaded only with loose black powder or Pyrodex. (3-15-02)
 - ii. Is loaded only with a patched round ball projectile. (3-15-02)
- 04. Short-Range Weapon.** During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)
 - a.** With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
 - b.** With any muzzleloader that is at least forty-five (0.45) caliber for deer, antelope, or mountain lion or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-99)
 - c.** With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- 05. Other.** (7-1-93)
 - a.** With electronic calls EXCEPT for the hunting of mountain lions in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486. (3-15-02)
 - b.** With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals". (3-30-01)
 - c.** With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs". (7-1-93)
 - d.** With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment. (7-1-93)
 - e.** In Traditional Archery and Muzzleloader Hunts, the use of motorized vehicles shall be limited to public highways and improved highways which are open to public use. (3-15-02)
 - f.** In Unit 47, motorized vehicle use as an aid to hunting for wildlife is restricted to established roadways open to motorized traffic capable of travel by full-sized automobiles. A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (3-17-03)T
 - g.** Motorized vehicle use as an aid to hunting for wildlife is restricted to established roadways open to motorized traffic capable of travel by full-sized automobiles in identified hunts in Units 32, 32A, 48, 49, 50, 51, 58, 59, 59A, 70, 72, 73, 75, 77, and 78. The hunts with a motorized vehicle restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (3-17-03)T

421. MANDATORY DEER AND ELK REPORT REQUIREMENTS.

01. Mandatory Report Form. After an antelope, deer and/or elk is killed the hunter must accurately complete a Mandatory Report as provided by the Director. (3-15-02)

02. Mandatory Report. Any hunter that obtains an antelope, deer and/or elk tag and kills an antelope, deer and/or elk must submit a completed Mandatory Report to the Department or authorized agent, WITHIN TEN (10) DAYS OF KILL any hunter that obtains an antelope, deer and/or elk tag and does not successfully kill an antelope, deer and/or elk must submit a completed Mandatory Report Form to the Department or authorized agent WITHIN TEN (10) DAYS OF THE CLOSING DATE OF THE APPROPRIATE SEASON. (3-15-02)

03. Failure To Report. Failure to submit the required antelope, deer and/or elk Mandatory Report by January 31 of the following year as required in Subsection 421.02 will render the hunter ineligible to obtain any subsequent year's license until a Mandatory Report permit is filed with the Department or authorized agent. To be effective December 31, 2003. (~~3-15-02~~)(3-17-03)T

04. Drawing For "Super" Tag. All successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope/deer/elk tags. Each hunter drawn for a "Super" controlled antelope/deer/elk hunt must notify the Department by May 1 of which species they have selected to hunt. The "Super" controlled hunt tag is valid for the selected species and allows the hunter to hunt in any open general and/or controlled hunt for the selected species in the following season. (3-15-02)

IDAPA 13 - IDAHO FISH AND GAME COMISSION

**13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME
ANIMALS IN THE STATE OF IDAHO**

DOCKET NO. 13-0108-0302P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2003 Big Game Seasons establishing seasons and limits for Big Game hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearings before the Fish and Game Commission will be as follows:

**October 2, 2003 at 7 p.m.
Red Lion Hotel
Idaho Falls, Idaho**

**December 3, 2003 at 7 p.m.
Department of Fish and Game Headquarters
600 S. Walnut, Boise, Idaho**

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
Fax (208)3342148

IDAPA 13 - IDAHO FISH AND GAME COMISSION

**13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME
ANIMALS IN THE STATE OF IDAHO**

DOCKET NO. 13-0108-0303P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2003 Moose, Bighorn Sheep and Mountain Goat Seasons establishing seasons and limits for hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearings before the Fish and Game Commission will be as follows:

**October 2, 2003 at 7 p.m.
Red Lion Hotel
Idaho Falls, Idaho**

**December 3, 2003 at 7 p.m.
Department of Fish and Game Headquarters
600 S. Walnut, Boise, Idaho**

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
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IDAPA 13 - IDAHO FISH AND GAME COMISSION
13.01.09 RULES GOVERNING THE TAKING OF GAME BIRDS
IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0301P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2003 Waterfowl Seasons establishing seasons and limits for waterfowl hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearings before the Fish and Game Commission will be as follows:

October 2, 2003 at 7 p.m.
Red Lion Hotel
Idaho Falls, Idaho

December 3, 2003 at 7 p.m.
Department of Fish and Game Headquarters
600 S. Walnut, Boise, Idaho

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
Fax (208)3342148

IDAPA 13 - IDAHO FISH AND GAME COMISSION
13.01.09 RULES GOVERNING THE TAKING OF GAME BIRDS
IN THE STATE OF IDAHO
DOCKET NO. 13-0109-0302P
NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2003 Turkey Seasons establishing seasons and limits for turkey hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearings before the Fish and Game Commission will be as follows:

October 2, 2003 at 7 p.m.
Red Lion Hotel
Idaho Falls, Idaho

December 3, 2003 at 7 p.m.
Department of Fish and Game Headquarters
600 S. Walnut, Boise, Idaho

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
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(208)334-3715
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IDAPA 13 - IDAHO FISH AND GAME COMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0301P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2004 - 2005 Fishing Seasons establishing seasons and limits for fishing in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearings before the Fish and Game Commission will be as follows:

October 2, 2003 at 7 p.m.
Red Lion Hotel
Idaho Falls, Idaho

December 3, 2003 at 7 p.m.
Department of Fish and Game Headquarters
600 S. Walnut, Boise, Idaho

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.12 - RULES GOVERNING COMMERCIAL FISHING IN THE STATE OF IDAHO

DOCKET NO. 13-0112-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 16, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 36-104(b) and -804, 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 15, 2003.

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:

Add Lake Trout to the species list available for commercial harvest, set a limited commercial fishing season for Lake Trout in Lake Pend Oreille, allow the use of conventional rod and reel fishing for commercial fishing for Lake Trout, and add required sections to this chapter of rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit for potential commercial fisherman, and benefits fishery management for Kokanee in Lake Pend Oreille by encouraging harvest of Lake Trout.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to increase and encourage Lake Trout harvest in Lake Pend Oreille to benefit Kokanee management, and it was determined that affected interests are not likely to reach a consensus on a proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Yundt (208) 287-2777.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 27th Day of August, 2003.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho, 83707
(208)334-3715
Fax (208)3342148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0112-0301

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-804, Idaho Code, to adopt rules concerning commercial fishing. (12-16-02)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.12.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.12, "Rules Governing Commercial Fishing". (12-16-02)T

02. Scope. These rules establish the criteria for commercial fishing in Idaho, identify waters where commercial fishing is allowed, and set standards for equipment. (12-16-02)T

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of these rules. (12-16-02)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 13.01.01, "Rules of Practice and Procedure of the Idaho Fish and Game Commission," and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (12-16-02)T

004. INCORPORATION BY REFERENCE.

There are no documents which have been incorporated by reference into this rule. (12-16-02)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Idaho Fish and Game Commission and Idaho Department of Fish and Game is in Boise, Idaho. The Headquarters office is located at 600 South Walnut, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: P.O. Box 25, Boise, Idaho 83707. (12-16-02)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

01. Commercial Fishing. Fishing for, taking, or transporting fish or crustacea for the purpose of selling, bartering, exchanging, offering or exposing for sale. (7-1-93)

02. Commercial Non-Game Fish Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03 of this rule, only the following ~~non-game~~ fish species may be taken for commercial purposes: (7-1-93)(12-16-02)T

- a. Bluehead sucker - *Catostomus discobolus*. (7-1-93)
- b. Bridgelip sucker - *Catostomus columbianus*. (7-1-93)
- c. Carp - *Cyprinus carpio*. (7-1-93)
- d. Chiselmouth - *Arocheilus alutaceus*. (7-1-93)
- e. Fathead minnow - *Pimephales promelas*. (7-1-93)
- f. Goldfish - *Carassius auratus*. (7-1-93)

- g.** Lake chub - *Couesius plumbeus*. (7-1-93)
- h.** Lake trout - *Salvelinus namaycush* (12-16-02)T
- h*1*.** largescale sucker - *Catostomus macrochailus*. (7-1-93)
- ij.** Leatherside chub - *Gila copei*. (7-1-93)
- jk.** Leopard dace - *Rhinichthys falcatus*. (7-1-93)
- kl.** Longnose dace - *Rhinichthys cataractae*. (7-1-93)
- lm.** Mountain sucker - *Catostomus platyrhynchus*. (7-1-93)
- mn.** Northern squawfish - *Ptychocheilus oregonensis*. (7-1-93)
- o.** Peamouth - *Mylocheilus caurinus*. (7-1-93)
- p.** Redside shiner - *Richardsonius balteatus*. (7-1-93)
- q.** Speckled dace - *Rhinichthys osculus*. (7-1-93)
- r.** Tench - *Tinca tinca*. (7-1-93)
- s.** Tui chub - *Gila bicolor*. (7-1-93)
- t.** Utah chub - *Gila atraria*. (7-1-93)
- u.** Utah sucker - *Catostomus ardens*. (7-1-93)

03. Commercial Crustacea Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03, only the Crayfish - species of the genus *Pacifastacus*, may be taken for commercial purposes. (7-1-93)

011. -- 099. (RESERVED).

100. LICENSES, TAGS AND PERMITS.

01. Licenses. Approved commercial gear may be set, operated, lifted or fished ONLY by the holder of a valid commercial fishing license to which the gear is registered or persons assisting in the presence of the licensee; except that any person assisting the holder of a commercial fishing license engaged in commercial fishing with the use of conventional rod and reel fishing tackle must either hold a commercial license or fishing license according to the Idaho Fish and Game Commission rules approved for sportfishing. The license must be in the possession of the licensee and made available at all times. (~~7-1-93~~)(12-16-02)T

02. Tags. No person may set, operate, lift or fish commercial gear unless such gear has attached thereto valid commercial gear tags, except that no tags need be attached to conventional rod and reel fishing tackle used for commercial fishing. The Director of the Department of Fish and Game is authorized to issue special tags for experimental commercial gear under such conditions as the Director may deem appropriate. (~~7-1-93~~)(12-16-02)T

- 03. Permits.** The Director may issue permits authorizing the holder thereof to: (7-1-93)
 - a.** Commercially fish for non-game fish or crustacea not listed as commercial species. (7-1-93)
 - b.** Commercially fish in waters other than those listed in Section 700. (7-1-93)
 - c.** Such permits shall be valid for a period not to exceed one (1) year. (7-1-93)

04. Revocation Of Licenses And Permits. The Director of the Department of Fish and Game is authorized to suspend, for a period not to exceed one (1) year, or revoke entirely, any commercial license or permit for violation of the Fish and Game Code or these rules by the licensee or persons acting under the licensee's direction and control. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA.

Fish or crustacea may be commercially harvested ONLY with the following gear and methods: (7-1-93)

- 01. With Seine Nets.** However, all seine nets must be either: (7-1-93)
- a.** Under constant attendance by the licensee or someone working under the supervision of the licensee; or (7-1-93)
- b.** If being used to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. (7-1-93)
- 02. With Crayfish Or Minnow Traps, Not Exceeding Three Feet In Any Dimension.** However, all crayfish and minnow traps must be lifted and emptied of catch at least once every ninety-six (96) hours except during periods of weather that pose a threat to human life, health or safety. (7-1-93)
- 03. Experimental Gear.** With experimental gear approved by the Director pursuant to Subsection 100.02. (7-1-93)
- 04. By Hand.** For crayfish ONLY, by hand. (7-1-93)
- 05. Trawl Nets.** With trawl nets as approved by the Director. (7-1-93)
- 06. Conventional Rod And Reel Fishing Tackle.** Only methods approved for sportfishing, as described in Idaho Fish and Game Commission fishing rules, are permitted, except that the holder of a commercial license may use more than two (2) lines while commercially fishing. (12-16-02)T

(BREAK IN CONTINUITY OF SECTIONS)

700. COMMERCIAL FISHING AREAS.

Commercial harvest is allowed only in the following areas: (7-1-93)

- 01. For Seine Nets.** Seine nets with a mesh greater than one and one half (1 1/2") square may be used ONLY in the following waters, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.:
- a.** Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)
- b.** Ashton Reservoir. (7-1-93)
- c.** Palisades Reservoir. (7-1-93)
- d.** Lake Lowell. (7-1-93)

- e. Black Canyon Reservoir. (7-1-93)
- f. Blackfoot Reservoir. (7-1-93)
- g. Mud Lake. (7-1-93)
- h. Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)

02. Minnow Traps. Minnow traps for commercial fish may be ONLY used in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b. (7-1-93)

- a. Snake River excluding main stem impoundments from Weiser upstream to the confluence of the North and South Forks. (7-1-93)
- b. Ashton Reservoir. (7-1-93)
- c. Palisades Reservoir. (7-1-93)
- d. Black Canyon Reservoir. (7-1-93)
- e. Blackfoot Reservoir. (7-1-93)
- f. Mud Lake. (7-1-93)
- g. Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)

03. Crayfish Traps. Crayfish traps for commercial crustacea may be used ONLY in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.: (7-1-93)

- a. Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)
- b. Black Canyon Reservoir. (7-1-93)
- c. Blackfoot Reservoir. (7-1-93)
- d. Mud Lake. (7-1-93)
- e. Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)

04. Rod And Reel And Experimental Gear, For Lake Trout Only. Rod and reel and experimental gear for lake trout only may be used in the following areas: (12-16-02)T

- a. Lake Pend Oreille. (12-16-02)T

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.20 - RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS

DOCKET NO. 15-0120-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 2, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5003(3), 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 15, 2003.

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 proposed rule changes eliminate many existing requirements regarding the day-to-day operation of Area Agencies on Aging (AAAs). This will allow more flexibility in the AAAs' provision of services to the elderly through implementation of consumer choice programs. These AAAs are not state agencies but are subject to federal laws and rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule changes confer a benefit to AAA's by removing unnecessary references and requirements in the rules that deal with the day-to-day operations of AAAs.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01-811, negotiated rulemaking was not conducted because the temporary rulemaking confers a benefit to the affected AAA's.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Sarah Scott, Program Operations Unit Manager, at (208) 334-3833.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 15th day of August, 2003.

Sarah Scott
Program Operations Unit Manager
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, Idaho 83706
Telephone: (208) 334-2220
Facsimile: (208) 334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0120-0301

002. WRITTEN INTERPRETATION.

This agency may have written statements which pertain to the interpretation of the rules in this chapter. To obtain copies, contact the Idaho Commission on Aging by writing to the ~~Director~~ Administrator. (7-1-98)(9-2-03)T

003. ADMINISTRATIVE APPEALS.

The ICOA ~~and its AAAs~~ shall provide ~~service recipients and provider organizations~~ AAAs with the opportunity to appeal administrative decisions ~~as follows:~~ (7-1-98)(9-2-03)T

~~01. AAA Designation. Any organization denied AAA designation through a competitive bidding process may appeal the decision in accordance with IDAPA 38.05.01, "Rules of the Division of Purchasing".~~ (7-1-98)

~~02. AAA Provider Contracts. Any organization denied an AAA contract through a competitive bidding process may appeal the decision in accordance with IDAPA 38.05.01, "Rules of the Division of Purchasing".~~ (7-1-98)

~~03. Recipients Of Service. AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing according to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," for any individual who is denied or terminated from a service.~~ (7-1-98)

004. -- 009. (RESERVED).

010. DEFINITIONS.

~~Any item not specifically defined below shall have the same meaning as those listed in IDAPA 15.01.01, "Rules Governing Senior Services Program".~~ (7-1-98)

~~01. Bidder/Officer/Proposer. An eligible organizational entity which submits to the AAA a proposal to provide specific service(s).~~ Act. The Idaho Senior Services Act (SS ACT). Programs and services established in Section 67-5001, et seq., Idaho Code. (7-1-98)(9-2-03)T

~~02. Bidders' Conference. A meeting conducted by the AAA to review the materials and information described in the RFP and to respond to questions from organizations that submit letters of intent and are interested in completing proposals on specific services.~~ Area Agency On Aging (AAA). Separate organizational unit within a multipurpose agency which functions only for purposes of serving as the area agency on aging that plans, develops, and implements services for older persons within a planning and service area. (7-1-98)(9-2-03)T

~~03. Blind Negotiation. A process which takes place between the AAA and bidders after the local evaluation committee has "scored" proposals and has determined that there is no significant difference, ten percent (10%), between bids. In this case, the AAA has the authority to select the proposal most advantageous to the AAA.~~ Area Plan. Plan describing aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding. (7-1-98)(9-2-03)T

~~04. Blind Review. A proposal reviewing process which conceals the identity of the submitting organization.~~ (7-1-99)

~~054. Contract. A legally binding, written agreement between two (2) or more parties which outlines the terms and provisions to which both parties agree.~~ (7-1-98)

~~05. Idaho Commission On Aging (ICOA). State agency that plans, sets priorities, coordinates, develops policy, and evaluates state activities relative to the objectives of the OAA.~~ (9-2-03)T

~~06. Evaluation Committee. A group of individuals selected to review proposing organizations'~~

~~completed proposals.~~ **Older Americans Act (OAA).** Federal law authorizing funding to states for supportive and nutrition services for the elderly. (7-1-98)(9-2-03)T

~~07. **Letter Of Intent.** A written communication submitted by a potential bidder soliciting a request for proposal to provide a specific service.~~ **Planning And Service Area (PSA).** ICOA designated geographical area within Idaho for which an AAA is responsible. (7-1-98)(9-2-03)T

~~08. **Performance Based Agreement.** A contract or grant which expresses priorities and directions through a statement of work and which serves as the basis for program review/assessment through the year.~~ (7-1-98)

~~09. **Request For Proposal (RFP).** A document issued by the AAA, describing in detail the service to be contracted and how it is to be delivered.~~ (7-1-98)

~~10. **Sole Source.** Documentation that only one (1) eligible, available provider is interested in providing a specific service.~~ (7-1-98)

~~11. **Statement Of Work.** The precise, definitive statement of what is expected of the provider. It shall answer such questions as what, how, when, where, and sometimes, why.~~ (7-1-98)

011. -- 019. (RESERVED).

020. PLANNING AND SERVICE AREA (PSA) DESIGNATION.

The ICOA shall has divided the state into PSAs in accordance with Section 305 of the OAA, as amended.

(7-1-98)(9-2-03)T

021. AAA-DESIGNATION.

~~01. **AAA Designation.** The ICOA shall accept applications for AAA designation in accordance with Section 305 of the OAA.~~ (7-1-98)

~~022. **REVOKING Revocation Of AAA Designation.** The ICOA may revoke the designation of an AAA in accordance with conditions as specified in ~~45 CFR 1321.35~~ OAA and the federal regulations thereunder.~~ (7-1-98)(9-2-03)T

~~01. **Due Process.** The ICOA shall provide due process in revoking AAA designation in accordance with Section 003 of this chapter and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General".~~ (7-1-98)

~~02. **Assumption Of Responsibilities.** Upon revocation of AAA designation, the ICOA shall assume the responsibilities of the AAA in accordance with 45 CFR 1321.35.~~ (7-1-98)

~~03. **Denial Of AAA Designation.** Any organization denied AAA designation through a competitive bidding process may appeal the decision to the Administrator of ICOA.~~ (9-2-03)T

~~023. — 030. (RESERVED).~~

~~0314. **Limit On The Number Of Area Agencies And PSA'S.** In order to maximize funding for services that directly benefit the elderly, the ICOA shall limit the number of PSAs and AAAs is limited to six (6).~~ (7-1-98)(9-2-03)T

~~032. **DISTRIBUTION OF FUNDS.**~~

~~In accordance with Section 305 of the OAA, the ICOA shall develop a formula for distribution of funds and shall publish the formula for review and comment.~~ (7-1-98)

~~033. **AWARDING OF FUNDS.**~~

~~The ICOA shall award funds to AAAs through performance based agreements set forth in a prescribed format and in accordance with guidelines developed by the ICOA.~~ (7-1-98)

03422. AAA BUDGETS FORMS AND REVISIONS.

01. Budget Forms. ~~As part of their agreement with the ICOA, e~~Each AAA shall submit, on forms provided by the ICOA, a budget for agency operations. The AAA shall maintain sufficiently detailed ~~in~~ budget and expenditure records to respond to requests ~~by~~ for information from the ICOA, Administration on Aging, legislators, or the general public. (7-1-98)(9-2-03)T

02. Budget Revisions. Requests for approval of ~~B~~budget revisions shall be ~~provided~~ made in writing to the ICOA: (7-1-98)(9-2-03)T

a. In order to process transfers ~~in~~ between Title III programs; (7-1-98)(9-2-03)T

b. To reflect holdbacks or midyear increases in state or federal spending; or (7-1-98)

c. If there is a change in spending which exceeds ten percent (10%) ~~or ten thousand dollars (\$10,000) within state or federal budgets~~ of any line item in the comprehensive budget summary. (7-1-98)(9-2-03)T

03523. -- 040. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

042. CONTRACT MANAGEMENT REQUIREMENTS.

AAAs shall ~~follow State~~ adhere to all applicable federal contracting and ~~P~~procurement ~~Practices~~ requirements in awarding subcontracts, ~~in accordance with the ICOA Area Agency on Aging Operations Manual, Chapter 4.~~ (7-1-99)(9-2-03)T

~~01. **Competitive Bids.** The AAAs shall accept competitive bids and shall develop contracts for provision of programs and services authorized and funded under the OAA of 1965, as amended, and Sections 67-5007 and 5008, Idaho Code.~~ (7-1-98)

~~021. **Incorporation Of Non-Profit Agency Contractors.** All private non-profit agency contractors shall be~~ AAAs may subcontract with private, non-profit agencies that are incorporated as 501(c)(3) organizations. (9-2-03)T

02. AAA Provider Subcontracts. All subcontracts between the AAA and service providers shall contain sufficient program and financial information to ensure all activities comply with the Area Plan, the ~~Act~~ OAA, federal regulations, the SS Act, and the rules of the ICOA. (7-1-98)(9-2-03)T

03. ~~Multi-Year Contracts Term.~~ ~~The~~ Each AAA may award multi-year subcontracts not to exceed four (4) years. (9-2-03)T

a. ~~The~~ Each AAA shall maintain documentation ~~which~~ satisfactory to ICOA that justifies the reason(s) a multi-year subcontract was awarded. Justification for a multi-year subcontract ~~shall~~ may include, but is not limited to, the following: (7-1-98)(9-2-03)T

~~ai.~~ More than one (1) year is necessary to complete the project or service; (7-1-98)

~~bii.~~ More than one (1) year is necessary to justify substantial cost savings; ~~or~~ (7-1-98)(9-2-03)T

~~eiii.~~ A multi-year subcontract award is necessary to allow ~~the~~ a provider the opportunity to increase and demonstrate capacity to operate a particular service; ~~or~~ (7-1-98)(9-2-03)T

~~db.~~ No AAA shall continue a multi-year subcontract unless ~~the~~ Results of evaluation justify

continuance of the ~~subcontract with the existing provider.~~

~~(7-1-98)(9-2-03)T~~

~~04. **AAA Provider Appeals.** When there is competition for specific services, the bidder who does not receive the award has a right to appeal the decision. The AAA is required to include information in the RFP describing the appeal procedure available to non-selected organizations. AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing for any organization denied a subcontract with the AAA.~~

~~(7-1-98)(9-2-03)T~~

~~05. **Noncompetitive Negotiation.** Noncompetitive negotiation of contracts is allowable if the AAA follows IDAPA 38.05.01, "Rules of the Division of Purchasing".~~

~~(7-1-98)~~

~~06. **Execution Of Contracts.** The AAA is required to demonstrate prudent execution of any agreements (contracts) between the agency and public or private (for-profit or non-profit) organizations receiving state or federal funds.~~

~~(7-1-98)~~

~~07. **Standard Contracts.** The AAA shall develop a standard contract format to be used in those instances where no special format is required by ICOA. The AAA shall develop procedures assuring that recipients of contracts are made fully aware of responsibilities and obligations under the approved Area Plan. Upon approval of contracts under the Area Plan, the AAA shall maintain file copies of contracts, criteria used to approve contracts, copies of the approved proposals, and any amendments.~~

~~(7-1-98)~~

~~08. **Contract Management Activities.** Contract management encompasses those AAA activities which shall take place after a contract has been executed. The AAA shall assure that each executed contract is performed, as written, by both the provider and the AAA.~~

~~(7-1-98)~~

~~09. **Contract Management Staff.** The AAA shall assign a staff person to assure that contracts are properly administered, monitored, and reviewed on a continuing basis.~~

~~(7-1-98)~~

~~10. **Close Out Or Termination.** The close out or termination phase of a contract begins when one (1) or more of certain steps are initiated to bring the contract to an end and concludes with the final settlement of all contract matters. Close out may entail such steps as:~~

~~(7-1-98)~~

~~a. Issuance of stop work orders, termination notices, etc.;~~

~~(7-1-98)~~

~~b. Negotiation and adjudication of disputes and appeals;~~

~~(7-1-98)~~

~~c. Negotiation and execution of releases;~~

~~(7-1-98)~~

~~d. Final payment; and~~

~~(7-1-98)~~

~~e. Other pertinent procedures.~~

~~(7-1-98)~~

~~11. **Close Out Or Termination Procedures.** Close out or termination includes the following procedures:~~

~~(7-1-98)~~

~~a. Upon termination of contract, the AAA may require the provider to return any property specifically produced or acquired under the contract. The provisions of the "Treatment of Assets" clause contained in the contract document shall apply in such property transfer.~~

~~(7-1-98)~~

~~b. The AAA shall pay the provider the agreed upon price, if separately stated, for goods and services accepted by the AAA and for the amount agreed upon by the provider and the AAA for:~~

~~(7-1-98)~~

~~i. Completed work and services for which no separate price is stated;~~

~~(7-1-98)~~

~~ii. Partially completed work and services;~~

~~(7-1-98)~~

~~iii. Other property or services which are accepted by the AAA; and~~

~~(7-1-98)~~

iv. The protection and preservation of property, unless the termination is for default, in which case the AAA shall determine the extent of liability of the contracting agency. (7-1-98)

e. Failure to agree with such determination shall be regarded as a dispute concerning a question of fact within the meaning of the "Disputes" clause of the written contract document. The AAA may withhold, from any amounts due the provider for such completed work or services, such sum as the AAA determines to be necessary to protect the AAA from loss resulting from outstanding liens or claims of former holders. (7-1-98)

~~**12. Non-Exclusivity Of Rights And Remedies.** The rights and remedies of the AAA provided in this part shall not be exclusive and are in addition to any other rights and remedies provided by law or under the terms of the contract document. (7-1-98)~~

~~**13. Provider Termination Responsibilities.** After receipt of a notice of termination, the provider shall: (7-1-98)~~

~~**a.** Stop work under the contract on the date and to the extent specified in the notice; (7-1-98)~~

~~**b.** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (7-1-98)~~

~~**c.** Settle all outstanding liabilities and all claims arising out of such termination of order and contract. (7-1-98)~~

~~**d.** Transfer title to the AAA and deliver in the manner, at the time, and to the extent, if any, directed by the AAA, any property which, if the contract had been completed, would have been required to be furnished to the AAA; (7-1-98)~~

~~**e.** Complete performance of such part of the work as shall not have been terminated by the AAA; and (7-1-98)~~

~~**f.** Take such action as may be necessary, or as the AAA may direct, for the protection and preservation of the property related to the contract, which is in the possession of the provider and in which the AAA has or may acquire an interest. (7-1-98)~~

043. -- 050. (RESERVED).

051. AREA ADVISORY COUNCILS ON AGING.

01. Establishment Of Council. The AAA shall establish an advisory council in accordance with the requirements of the OAA, as amended, and all pertinent federal regulations. (7-1-98)

02. Council Meetings. ~~In addition to the federal requirements, the~~ Each advisory Council shall hold meet at least two (2) full council meetings each year, and committees of the Council shall meet at least four (4) times each year. (7-1-98)(9-2-03)T

~~**03. Local Elected Officials.** The Council shall include at least two (2) local elected officials from different jurisdictions. (7-1-98)~~

~~**04. Ethnic Minority Representation.** The Council shall include at least one (1) representative from each racial or ethnic minority community located within the PSA. For purposes of this subsection, a community is a unified group of African American, Asian/Pacific Island, Hispanic, Native American, or other individuals sharing common origin, history, culture, or interests living in a particular geographic area. (7-1-98)~~

~~**053. Conflict Of Interest.** Staff paid under the Area Plan AAA employees, or members of the immediate families of paid staff members AAA employees, shall not serve on the advisory Council. (7-1-98)(9-2-03)T~~

064. By-Laws. The ~~advisory~~ Council shall adopt and operate according to by-laws, ~~adopted by the Council. Such by-laws shall include:~~ (7-1-98)(9-2-03)T

- ~~a.~~ Name of Council. (7-1-98)
- ~~b.~~ Council responsibilities. (7-1-98)
- ~~c.~~ Selection and composition of Council members. (7-1-98)
- ~~d.~~ Term of Office. (7-1-98)
- ~~e.~~ Council meetings. (7-1-98)
- ~~f.~~ Election, duties, and term of office of officers. (7-1-98)
- ~~g.~~ Committees of the Councils and their responsibilities. (7-1-98)
- ~~h.~~ Provisions for adoption and amendment of by-laws. (7-1-98)

052. AREA PLANS.

Each AAA shall submit a four (4) year area plan to the ICOA by close of business ~~October 15, 1998~~ January 1, 2002, and by October 15 every four (4) years thereafter. Annual updates shall be submitted by October 15 of each year. The area plan and annual updates shall be submitted in a uniform format prescribed by the ICOA to meet the requirements of the OAA and all pertinent federal regulations. (3-30-01)(9-2-03)T

053. SERVICE PRIORITY AND APPEALS.

01. Service Priority. Pursuant to the OAA, ~~Each~~ AAA shall ensure that all service providers prioritize service delivery to those older individuals having the greatest economic and ~~for~~ social need, with particular attention to low-income minority individuals and individuals residing in rural areas. (7-1-98)(9-2-03)T

02. Denial Or Termination Of Service. AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing for any individual who is denied or terminated from a service. (9-2-03)T

054. ELIGIBILITY.

01. Eligibility For Act Programs. Persons age sixty (60) years and older who are residents of the state of Idaho are eligible for SS Act Pprograms. (7-1-98)(9-2-03)T

02. Eligibility For OAA Programs. ~~Persons age sixty (60) years and older and their spouse, regardless of residency, are eligible for OAA programs with the exception of the Senior Community Service Employment Program (SCSEP). Eligibility for the SCSEP program is fifty five (55) years and older.~~ (7-1-98)

055. AAA ASSESSMENTS OF PROVIDERS.

Every other year each AAAs shall conduct, at a minimum, ~~bi-annual~~ one (1) on-site assessments of each of ~~their~~ its providers. Such assessments shall comply with the terms of the ~~performance-based agreement~~ AAA contract with the ICOA. Such reviews shall be on file for ICOA review. (7-1-98)(9-2-03)T

056. REPORTING REQUIREMENTS.

01. Reporting Forms. Each AAA shall submit to the ICOA such reports as are specified by the ICOA, in such format and on such schedule as is established by the ICOA, in fulfillment of all federal and state requirements. (7-1-98)

02. Verification Of Service Provider Reports. The AAAs shall conduct ongoing verification of service provider reports in accordance with the terms of the ~~performance-based agreement~~ contract with the ICOA.

~~(7-1-99)(9-2-03)T~~

03. Reporting Deficiencies. If reports are late, incorrect, or incomplete, the ICOA shall withhold funds from the AAA, in accordance with terms of the ~~performance-based agreement~~ contract between the ICOA and the AAA, until a correct report is received by the ICOA. ~~(7-1-99)(9-2-03)T~~

~~057. COMPLAINTS AGAINST AAA EMPLOYEES.~~

~~When complaints are received alleging improper or illegal actions on the part of AAA employees who are providing direct services to clients, the AAA shall refer the complaint to the ICOA. The ICOA shall conduct an investigation, develop findings, and make recommendations to the AAA. (7-1-98)~~

~~0587. CIVIL RIGHTS.~~

Neither the AAAs nor their providers shall violate any state or federal law regarding civil rights and shall provide all services and functions funded by the ICOA, affected by rule of the ICOA or provided for by contract with the ICOA without discrimination on the basis of race, color, national origin, age, gender, physical or mental impairment, or on any other basis prohibited by law. (7-1-98)

~~0598. -- 065. (RESERVED).~~

066. FINANCIAL MANAGEMENT.

01. Regulations. Area agencies and service providers shall meet the financial management requirements of 45 CFR, Section 74 and Section 92. (7-1-98)

~~02. Timing Of Expenditures. Expenditures for a program shall not be made before the beginning date of the contract, nor after the ending date, except for accounts payable and other written obligations. Those obligations shall be paid within sixty (60) days of the end of the fiscal year. (7-1-98)~~

0672. Allowable Costs. Allowable costs are delineated in the OAA, Cost Principles for Colleges and Universities, OMB Circular A-21, and Cost Principles for Non-Profit Organizations, OMB Circular A-122. These cost principles shall apply to the expenditure of federal funds, ~~and as well as any state or~~ local funds which are reported as match for federal funds. In-kind contributions shall benefit the program for which they are reported as match. No expenditure shall be used as match if it has been or will be counted as match for another award of federal or state funds. ~~(7-1-98)(9-2-03)T~~

~~068. COLLECTION AND ACCOUNTABILITY OF PARTICIPANT CONTRIBUTIONS.~~

~~01. Participant Contribution Confidentiality. All participants shall be given the opportunity to contribute to programs operated with Administration on Aging funds. The method of collection shall respect the privacy of the participant, and provide for confidentiality of the fact and amount of the contribution. (7-1-98)~~

~~02. Payment For Service. Persons under the age of sixty (60), who are not spouses of eligible participants, shall pay the full cost of meals, as published by the meal provider. No eligible person shall be denied services because of inability to pay. (7-1-98)~~

~~03. Used To Support Service. Service contributions shall be used to support the service from which they were generated. (7-1-98)~~

~~04. Security For Cash Collections. The service provider collecting funds shall provide for security of cash collected by having two (2) people involved in the collection and counting process. (7-1-98)~~

~~0693. Audits Of AAA's And Service Providers. All AAAs and service providers receiving more than three hundred thousand dollars (\$300,000) of federal funds per year shall be audited per the Single Audit Act of 1996 and OMB Circular A-133. No audit is required for service providers receiving state funds or less than three hundred thousand dollars (\$300,000) in federal funds per year. (7-1-98)(9-2-03)T~~

~~07067. -- 999. (RESERVED).~~

IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED
15.02.30 - BUSINESS ENTERPRISE PROGRAM
DOCKET NO. 15-0230-0302
NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5407, 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 15, 2003.

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 proposed rules incorporate by reference the Commission's Business Enterprise Allowable Cost Manual, which sets forth performance standards for the operation of a primary location, and provide for discipline of vendors who are not operating in compliance with those standards. The rules are needed to provide standards for the operation of snack bar, vending, and cafeteria sites (that constitute primary locations under the Business Enterprise Program).

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

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Angela Roan, Acting Administrator, at (208) 334-3220.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Angela Roan
Acting Administrator
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720, Boise, Idaho 83720-0012
Telephone: (208) 334-3220
Facsimile: (208) 334-2963

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0230-0302

004. INCORPORATION BY REFERENCE.

There are no documents that have The Business Enterprise Program Allowable Cost Manual, dated August 15, 2003, which has been issued by the Commission for the Blind and Visually Impaired, has been incorporated by reference

into this rule.

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE.

~~The records associated with the Business Enterprise Program~~ All rules contained in this chapter are subject to and in compliance with the provisions of the Idaho Public Records Act; (Title 9, Chapter 3, Idaho Code).

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

100. SETTING ASIDE OF FUNDS.

01. Set Aside. Maintenance and Purchase of New Equipment. The Commission may set aside, or cause to be set aside, from the net profit of the operation of facilities, funds for the purposes of: (3-1-93)

a. Maintenance and replacement of equipment; (3-1-93)

b. Purchase of new equipment. (3-1-93)

02. Other Purposes Allowed By The Randolph-Sheppard Act. The Commission reserves the right to use set aside funds for other purposes as permitted in accordance with the provisions of the Randolph-Sheppard Act and Federal Rules and Regulations. (3-1-93)

03. Approval By The United States Department Of Education. The funds set aside for those specified purposes shall not exceed the amount determined reasonable by the Rehabilitation Services Administration Commissioner, U.S. Department of Education. (3-1-93)

04. Record Of Expenditures. The charge for each of the program purposes cited shall be determined on the basis of records of expenditures made for each of these purposes over a reasonable period of time with allowances for improving services, fluctuations in costs and program expansion. Adequate records shall be maintained to support the charges for each of the purposes cited. (3-1-93)

05. Increases. At no time shall the set aside charges be increased without prior consultation with the Committee. (3-1-93)

06. Review Of Schedule Of Funds. The schedule of funds to be set aside shall be reviewed periodically by the Supervisor and the Committee. After reviewing the accounting records and other criteria pertinent to the administration of the Program, it may be necessary to revise the set aside payment schedule. (3-1-93)

07. Income With No Program Operator. Vending machine income received from Federal sites where there is no licensed Program operator shall be used for those purposes designated by the Committee in accordance with Title 34, Part 395.8, of the Code of Federal Regulations. (3-1-93)

08. Performance Standards For A Primary Location. Each vendor operating a primary location is required to meet the performance standards set forth in the incorporated Business Enterprise Allowable Cost Manual. Failure to meet performance standards as set forth in the Business Enterprise Program Allowable Cost Manual will result in the vendor being placed on probation (see Subsection 040.06). Continued failure to meet the performance standards during the probationary period will result in the termination of the vendor's agreement or license (see Sections 040 and 140). ()

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Friday, October 3, 2003, 10 am-Noon -- 1:30-3:30, Idaho State Police, 700 S. Stratford, Meridian, ID

Monday, October 6, 2003, 10 am-Noon, Department of Health and Welfare, 1118 F Street,
3rd Floor Conference Room, Lewiston, ID

Monday, October 6, 2003, 2-4 pm, Idaho State Veterans Home, 821 21st Ave, Lewiston, ID

Tuesday, October 7, 2003, 10 am-Noon, CDA Lands, 1118 F St., 3rd Floor Conference Room, Lewiston, ID

Tuesday, October 7, 2003, 4-6 pm, CDA DEQ Large Conference Room, 2110 Ironwood Parkway,
Coeur d'Alene, ID

Tuesday, October 7, 2003, 2:30-4:30 pm, BSU, Jordan A Room (SUB), 1910 University Drive, Boise, ID

Tuesday, October 7, 2003, 10-11:30 am -- 1-2:30 pm, Department of Health and Welfare,
Conference Rooms A and C, 601 Pole Line Rd., Twin Falls, ID

Wednesday, October 8, 2003, 10 am-Noon -- 1:30-3:30 pm, Idaho State Police, 700 S. Stratford, Meridian, ID

Wednesday, October 15, 2003, 10 am-Noon Conference Room C and D -- 1:30-3:30 pm Conference Room D,
Department of Environmental Quality, 1410 North Hilton, Boise, ID

Wednesday, October 15, 2003, 10 am-Noon, DHR, Idaho Room, 700 W State St., Boise, ID

Monday, October 20, 2003, 8:30-10:00 am, ISU, North Fork Room (SUB), 921 S. 8th, Pocatello, ID

Monday, October 20, 2003, 2:30-4:30 pm, Idaho State Veteran's Home, 1957 Alvin Ricken Drive, Pocatello, ID

Tuesday, October 21, 2003, 10 am-Noon, DEQ, 900 North Skyline Drive, Idaho Falls, ID

Tuesday, October 21, 2003, 2-4 pm, DJC (Chapel), 2220 E. 600 N., St. Anthony, ID

Wednesday, October 22, 2003, 5:30-7:30 pm, DEQ, Ste. 300 Snake River Rm, 444 Hospital Way, Pocatello,

ID

Additional hearings around the state will be announced.

The hearing sites 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: Continuing reform of the personnel system rules to make them more effective, efficient and understandable. More significant changes include:

Adding definitions for administrator, appointing authority, seasonal appointment, due process, hiring list, light or limited duty, organizational unit, in-grade promotion, and recruitment. Clarifying existing definitions.

Updating compensation provisions. Broadening labor market comparators to better reflect the relative labor market.

Defining circumstances where an employee can be paid outside their salary range.

Clarifying payment of holiday benefit and shift differential.

Updating bonus provisions to conform with code.

Significant changes to the layoff determination process and reemployment preference rights.

Modification to length of time an applicant can be removed from eligibility registers.

Clarification of rights of limited service employees.

Rule allowing conversion to temporary appointments to classified service under certain circumstances.

Significant changes to employee status upon unsatisfactory performance during promotional probation.

Clarification of veterans' preference procedures.

Rule allowing for expedited dismissal of non-judicial appeals.

Allowing costs and attorney fees to be awarded to the prevailing party in an appeal.

Clarifying who may represent employees before the IPC.

Identifying circumstances where an employee will be considered to have resigned.
Discussion of sick leave abuse.
Clarifying procedure for donated leave.
Clarifying that service records of former employees seeking reinstatement should be shared with the agency considering hire.
Clarifying supervisor responsibility to manage and document performance.
Clarifying nepotism and conflict of interest rules.
Expanding the use of sick leave to include foster children.
Setting out minimum human resource policies.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted. Input was solicited through electronic mail, as well as meetings with state human resources personnel.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Daniel Steckel at 429-5507.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 27th day of August, 2003.

Ann Heilman, Administrator
Division of Human Resources
700 West State Street
P.O. Box 83720, Boise, ID 83720-0066
(208) 429-5500

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-0301

IDAPA 15, TITLE 04, CHAPTER 01

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

001. TITLE, AND SCOPE, AND ENFORCEMENT.

01. Title. These rules shall be cited as IDAPA 15.04.01, "Rules of the Division of Human Resources and Idaho Personnel Commission". (3-30-01)()

02. Scope. These rules establish the policies and procedures of the Idaho Personnel System. (3-30-01)

03. Enforcement. In accordance with the Legislature's intent in creating the Idaho Personnel Act and for consistency in rule administration, appointing authorities have the responsibility to ensure that staff with human resource management responsibilities adhere to these administrative rules. Any person willfully violating provisions of the Idaho Personnel System or the rules established in this chapter, may be subject to discipline, up to and including dismissal under Rule 190, and/or sanctions provided in Section 67-5312, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

003. CITATION OF RULES.

The official citation of the Division of Human Resources and Idaho Personnel Commission's (the "Commission") rules is, for example, IDAPA 15.04.01.072.01. An informal reference may be made to "Rule 072.01". ~~(7-1-93)~~(____)

004. ADDRESS AND PHONE NUMBERS OF THE DIVISION OF HUMAN RESOURCES AND IDAHO PERSONNEL COMMISSION.

The offices of the Division of Human Resources and Idaho Personnel Commission are located at 700 West State Street, Boise, Idaho 83720-270066. The phone number of the Commission and the Division of Human Resources is (208) 334-2263. Additional phone numbers are: ~~a job announcement recording at (208) 334-2568;~~ a toll-free number, 1-800-554-JOBS (5627); a toll-free TDD or telecommunications device for the deaf, 1-800-542-5738. The Division's and Commission's FAX number is (208) 334-3182. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

007. DESIGNATION OF OFFICERS.

The chair~~man~~ of the Idaho Personnel Commission shall be appointed by the Governor pursuant to Section 67-5307(3), Idaho Code. At its first meeting each calendar year, the ~~Personnel~~ Commission shall designate a vice-chair~~man~~ for the ensuing year. ~~(4-5-85)~~(____)

008. ~~(RESERVED)~~ APPLICABILITY TO HEALTH DISTRICTS.

~~These rules apply to Public Health Districts even though specific references are to state employment.~~ (____)

009. DUTIES OF THE ADMINISTRATOR.

In addition to other duties as assigned by law, the administrator shall provide administrative support to the Idaho Personnel Commission, shall have custody of the books and records of the Division of Human Resources and ~~Personnel~~ the Commission, and shall maintain a record of the proceedings before the Commission and its hearing officers. ~~(4-5-85)~~(____)

010. DEFINITIONS.

Each of the terms defined in these rules shall have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

01. Administrator. The Administrator of the Division of Human Resources in the Office of the Governor. (____)

042. Allocation. The assignment of a classification to a pay grade in the compensation schedule. ~~(8-1-81)~~(____)

023. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the ~~Personnel~~ Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. ~~(4-5-85)~~(____)

034. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the ~~Personnel~~ Commission. ~~(7-1-87)~~(____)

05. Appointing Authority. "Appointing Authority" means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any department. (Ref. Section 67-5302(3), Idaho Code) (____)

046. Appointment, Limited. The appointment of a person to a classified, ~~non-career~~ position where the work is projected to be of limited duration, for which the person has qualified by examination. ~~(4-5-85)~~()

057. Appointment, Nonclassified. The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

068. Appointment, Original Or Initial. For purpose of assigning veteran's preference points, the first appointment of time a person is hired by a state agency to any classified position in state service full-time position after attaining eligible veteran's status. (Ref. Section 65-506(3), Idaho Code and Rule 102.04) ~~(4-5-85)~~()

079. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Chapter 53, Title 67, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. ~~(7-1-87)~~()

0810. Appointment, Probationary. The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

0911. Appointment, Project Exempt. The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) ~~(7-1-87)~~()

102. Appointment, Provisional. The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. ~~(4-5-85)~~()

13. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) ()

144. Appointment, Temporary. The appointment of a person to a nonclassified position which is not permanent in nature, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) department. Such appointments also may occur on a seasonal basis. (Ref Section 67-5302(33) Idaho Code) ~~(7-1-87)~~()

125. Certifiable Range. An examination score and a rank on an eligibility register sufficiently high to be among the top ten (10) available names, plus names of all individuals with scores identical to the tenth ranking eligible, for certification to fill a position in the classification for which the register was established. ~~(3-30-01)~~()

136. Classification Specification. A written statement of the purpose and responsibilities characteristic of a classification, which includes the title, principal accountabilities, and minimum qualifications of education, training and experience, abilities, knowledge, skill, and other qualifications required to perform the work of the classification. ~~(7-1-87)~~

147. Classification Schedule. All classification specifications utilized in classified service listed by title, classification code, and pay grade to which allocated. ~~(4-5-85)~~()

158. Classified Service. That body of positions in state departments subject to Chapter 53, Title 67, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (7-1-87)

169. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules; Division of Human Resources and Idaho Personnel Commission rules and policies; and departmental policies governing employee pay. ~~(7-1-87)~~()

1720. Compensation Schedule. The pay grades established by Section 67-5309C, Idaho Code, and associated rates of pay established in Rule 070.05. (3-30-01)

~~1821.~~ **Consultant.** An independent contractor who provides professional or technical advice, counsel, or service on a set fee basis. (Ref. Rule ~~010.30~~ 050) (7-1-87)(____)

~~1922.~~ **Demotion.** The reduction of an employee from a position which the employee occupies in one (1) classification to a position in another classification with a lower entrance salary. *Demotion does not include returning an employee to a class in which the employee has permanent status for failure to complete the promotional probationary period.* (Ref. Rule 150.04) (7-1-87)(____)

203. Departmental Classification. A classification of positions that is unique to a department. (7-1-87)(____)

214. Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. (7-1-87)

25. Due Process. As related to Idaho's Personnel System for classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard before involuntary dismissal, suspension, demotion, reduction in pay, or transfer. Classified employees, who have successfully completed a probation period, are entitled to due process. (____)

226. Earned Administrative Leave (EAL). Paid leave for hours worked which exceed the regularly scheduled hours but do not result in overtime. These hours may accrue after hours worked and hours on paid leave exceed forty (40) hours in one (1) workweek. In the case of those employees engaged in law enforcement, correctional, and firefighting activities characterized by irregular shift work schedules, EAL hours may accrue after hours worked and hours on paid leave exceed one hundred and sixty (160) hours in a period of twenty-eight (28) consecutive days. (3-30-01)

237. Employee. Any person in the employ of a state department who is paid a salary or wages. (4-5-85)

248. Employment History. The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works, including the official reason(s) for separation from employment but not including accrued leave balances or usage. (3-30-01)

259. Examination. The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)

2630. Factoring. The assignment of Hay evaluation points to a classification in accordance with Section 67-5309B, Idaho Code, and Rule 074. (3-30-01)

2731. General Classification. A classification of positions that is common to more than one participating department. (7-1-87)(____)

2832. Good Cause. The conduct of a reasonable person in the same or similar circumstances. (7-1-87)

33. Hiring List. A hiring list is a subset of a register (Rule 010.61). A hiring list consists of the top ten (10) individuals, plus all individuals tied for the tenth position, certified as eligible for a specific recruitment. (____)

~~2934.~~ **Hours Worked:** (7-1-87)

a. Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave or other approved leaves of absence, and excluding on-call time. (Ref. Rule 010.40) (3-30-01)

b. Travel time shall be compensated pursuant to policy set forth by the Board of Examiners. (3-30-01)

- c.** Attendance at lectures, meetings, training programs and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (5-15-85)
- 305.** **Incumbent.** Any person holding a classified or non-classified position in state service. (7-1-87)
- 316.** **Independent Contractor.** Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule 010.1821) (~~3-30-01~~)()
- 327.** **Interested Person.** A person or department directly affected by a rule, statute or department action or inaction. (6-30-78)
- 338.** **Intoxication.** Being under the influence of alcohol, or misuse of medication or controlled substances. (Ref. Rule 190.01.f.) (3-30-01)
- 349.** **Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. (3-30-01)
- 3540.** **Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. (4-5-85)
- 3641.** **Leave Of Absence With Pay.** A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee shall be compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: vacation leave, sick leave, special leave situations, and compensatory time off for overtime worked. (3-30-01)
- 3742.** **Leave Of Absence Without Pay.** A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee shall not be compensated. (7-1-87)
- 43.** **Light Or Limited Duty.** A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. ()
- 3844.** **Merit Increase.** The advancement of an employee's compensation in accordance with Section 67-5309C(b), Idaho Code. (7-1-87)
- 3945.** **Minimum Qualification Specialty.** A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. (~~7-1-93~~)()
- 406.** **New Classification.** A classification that is not essentially described by any existing job classification. (~~7-1-94~~)()
- 417.** **Occasional Or Sporadic Work.** Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (7-1-87)
- 428.** **On-Call Time.** Time when an employee is required to carry a pager, cellular phone, or to leave word at home or with the department where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. (3-30-01)
- 49.** **Organizational Unit (Layoff Unit).** A smaller geographic, programmatic, or other identified subdivision of a department determined by the appointing authority and approved by the administrator for the purpose of conducting a reduction in force (Rule 140). ()
- 4350.** **Overtime.** Those hours defined as such in Section 67-5302(19), Idaho Code, excluding any time, such as traded time and occasional or sporadic work, that is specifically excluded from the overtime calculation by federal law. (7-1-87)

4451. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309C(b)(i), Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B(a), Idaho Code, as approved by the administrator. (3-30-01)

452. Position, Classified. A position subject to Chapter 53, Title 67, Idaho Code, and these rules in which one (1) person is hired as a full-time or part-time employee; or in which two (2) or more persons share in the aggregate of the position. (7-1-87)

4653. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he or she occupies in one (1) classification to a position in another classification having a higher entrance salary paygrade. (~~4-5-85~~)()

54. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position which he or she occupies in one classification to a position in another classification having greater Hay points, more responsibility, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. ()

4755. Rating/Job Point Factoring. The number of Hay evaluation points assigned to a classification in accordance with Rule 074. (~~7-1-87~~)()

4856. Reasonable Accommodation. An adjustment made to a job and/or work environment that enables a qualified individual with a disability to perform the essential functions of the position and would not cause undue hardship on the operation of the department. (Ref. Rule 190.01.c.) (7-1-87)

4957. Reclassification Of A Position. A change of a position from the classification to which it is assigned to another classification. (~~3-30-01~~)()

508. Reclassification Of An Employee. Means a change in the classification assigned to the employee to properly reflect the duties and responsibilities assigned to that employee by an appointing authority. (3-30-01)

59. Recruitment. The process of seeking applicants for employment. ()

5160. Reduction In Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (~~7-1-94~~)()

5261. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (~~4-5-85~~)()

5362. Reinstatement. The reappointment of a former or current classified employee pursuant to Rule 1254. (~~7-1-87~~)()

54. Relief Shift Employee. *An employee whose regular assignment is to work during the absences of others. (Ref. Rule 075.01.b.)* (~~12-10-90~~)

5563. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (Ref. Rule 244) (~~6-11-89~~)()

564. Respondent. The party whose interests are adverse to those of the appellant. (7-1-93)

5765. Status. The character of an employee's appointment. (7-1-77)

5866. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. (7-1-87)

~~596~~**7. Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Rule 15~~0~~**2.** (~~3-30-01~~)(____)

608. Traded Time. Those hours an employee agrees to substitute for another employee during scheduled hours of work, where both work in the same capacity, the agreement to substitute is solely at the employees' option, and the agreement is approved by the agency by whatever manner is customary. (7-1-87)

~~64~~**9. Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (~~4-5-85~~)(____)

~~62~~**70. Underfill.** The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (~~4-5-85~~)(____)

~~63~~**71. Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Rule 073) (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

020. VETERANS PREFERENCE.

Preference must be given to qualified veterans who are residents of Idaho in all employment actions including hiring, transfer, promotion, and retention except for confidential secretarial positions. (3-30-01)

01. Veteran Defined (For Preference Purposes). Any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States Department of Veterans Affairs for the purpose of awarding federal veterans benefits and who has been discharged from service under honorable conditions. (Ref. Sections 65-509 and 65-510, Idaho Code) (3-30-01)

02. Preference Points. Veterans and disabled veterans who are residents of the state of Idaho, and their widows or spouses, when qualified under state law shall have additional points added to a passing score and placed on the register in accordance with the provisions set forth in Rule 102. (Ref. Rule 093.03, and Sections 65-502, 506, 507, and 67-5309(f), Idaho Code) (3-30-01)

03. Promotion/Transfer Consideration. Qualified veterans shall be given additional consideration in promotion and transfer decisions. When candidates are considered to be equal based on valid job related factors, veterans shall be preferred. (Ref. Sections 65-502, 65-504, and 67-5309, Idaho Code) (3-30-01)

04. Retention. War veterans (as defined in Chapter 5, Title 65, Idaho Code) shall receive ~~the equivalent of three (3) years of satisfactory service in additional points awarded towards the total calculation of retention points~~ preference for retention in a reduction of work force determination. (Ref. Rule 140) (~~3-30-01~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

022. PROHIBITED QUESTIONS.

All questions on applications and examinations shall be based on valid job requirements. Questions which impermissibly discriminate on the basis of race, national origin, color, sex, age, religion, disability, political affiliation, or veteran status are prohibited. Questions regarding veteran status for compliance with veterans' preference are permitted. (Ref. Rule 020) (~~3-30-01~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

024. CONFLICT OF INTEREST AND PERSONAL CONDUCT.

The maintenance of a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees. All appointing authorities shall establish such policies and standards necessary to implement Rule ~~024273~~. (3-30-01)(____)

0265. NEPOTISM.

No employee shall work under the immediate supervision or management chain-of-command of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. Similar relationships such as significant others, may also create a conflict of interest and should be addressed by agency policy. (Ref. Section 18-1359(e), Idaho Code) (8-1-81)(____)

0256. DUAL EMPLOYMENT.

There shall be no conflicting hours of work when a classified employee is employed by more than one (1) state department. The employee shall obtain approval from all appointing authorities concerned prior to beginning dual employment. (4-5-85)

027. -- 039. (RESERVED).

040. NONCLASSIFIED EMPLOYEES SUBJECT TO CLASSIFIED SERVICE SUBSEQUENT TO APRIL 5, 1985.

The provisions of this rule shall apply to all employees exempt from classified service who, subsequent to April 5, 1985, become subject to the provisions of Chapter 53, Title 67, Idaho Code. (3-30-01)

01. Probationary Period. A nonclassified employee brought under classified service under Rule 040 must serve a probationary period appropriate for the classification assigned to the employee's position. Service uninterrupted by resignation, termination, or dismissal immediately prior to inclusion in classified service shall be considered as probationary service. (3-30-01)(____)

02. Certification To Permanent Status. An employee who has completed a probationary period as required above and who is certified in writing by the appointing authority as serving satisfactorily shall be certified to permanent status without examination. (3-30-01)

03. Examination. An employee who has not completed a probationary period as required above shall be required to pass an examination for the classification assigned to the employee's position. Prior to passing such examination, the employee's status shall be provisional. (3-30-01)(____)

04. Separation. An employee who is not certified by the appointing authority as serving satisfactorily shall be separated from state service no later than thirty (30) calendar days after inclusion in classified service. An employee who fails to pass the examination or had an opportunity to have such examination and not availed himself or herself thereof shall be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-30-01)

~~**05. Salary.** *The salary of an employee, under these rules, shall be adjusted to the pay rate in the pay grade allocated to the employee's class that represents no salary loss from the employee's base rate in nonclassified status.* (3-30-01)~~

065. Salary Protection. If the salary of an employee, brought under classified service under Rule 040, is greater than the highest rate of the pay grade of the classification to which assigned, the employee's salary shall ~~not~~ be ~~reduced~~ protected; ~~but he or she shall thereafter receive no salary increase, except for bonuses provided under Section 67-5309C, Idaho Code to the maximum of their new paygrade.~~ (3-30-01)(____)

041. -- 049. (RESERVED).

050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.

Nothing in these rules shall prohibit the use of independent contractors or consultants who are paid on a fee basis for legal, medical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state department. (7-1-94)

01. No Fee Basis. No position in the state classified service shall be filled by a consultant or independent contractor on a fee basis. (8-1-81)

02. Limited Use Only. Individuals employed through contracts with temporary services or professional staffing agencies shall be utilized only for short-term situations. (3-30-01)

03. Conflict Of Interest/Nepotism. Agency policies regarding conflict of interest/nepotism apply to awarding work to consultants and contractors. See Rule 024 and 025. ()

04. Not To Be Treated As Employees. Independent contractors, their staff or consultants shall not be treated as employees. Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions. ()

051. -- 059. (RESERVED).

060. ADOPTION OF CLASSIFICATION SCHEDULE.

~~Adoption of Compensation Schedule.~~ The Division of Human Resources, after consulting with each appointing authority, shall develop, adopt, and make effective a classification schedule consisting of classification specifications allocated to various pay grades in the compensation schedule for all positions based on an analysis of the duties and responsibilities of representative positions. (4-5-85)()

(BREAK IN CONTINUITY OF SECTIONS)

063. REVIEW OF CLASSIFICATION SCHEDULE.

The administrator, in cooperation with the various appointing authorities, shall ~~review the classification schedule to~~ ensure the appropriateness and accuracy of ~~existing~~ classification specifications. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

065. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.

01. New And Refactored Classifications. New classifications of work and revised classifications ~~shall be submitted~~ require approval by both the administrator ~~to~~ and the Division of Financial Management administrator ~~for approval~~ when there is a fiscal impact. (3-30-01)()

02. Revised And Deleted Classifications. Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. (7-1-94)()

066. ABOLISHMENT OF POSITIONS.

An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 1478. (7-1-87)()

067. RECLASSIFICATION OF POSITIONS.

01. Procedure. Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by Division of Human Resources' staff of the duties and responsibilities assigned by appointing authorities to specific positions. An incumbent occupying a reclassified position shall be properly

classified by an appointing authority within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified. (4-5-85)

02. Effective Date. Reclassifications of positions shall not be effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee shall not precede the effective date of the reclassification of the position. (3-30-01)

~~**03. Violations.** Upon a determination of the administrator that an incumbent employee is improperly classified, the administrator shall notify the employee, the appointing authority, and the state controller's office that the employee is being compensated in violation of these rules. (Ref. Section 67-5312, Idaho Code) (7-1-87)~~

068. VIOLATIONS.

Accurate position classification is the foundation for providing equal pay for equal work, identification of actual work performed, fair employment and equal opportunity for promotions, and equitable compensation. Upon the administrator's determination that classification rules have been violated, the appointing authority will be informed and provided thirty (30) days to take actions necessary to correct the situation or submit a corrective action plan to the administrator. If these actions do not occur, the administrator will inform the employee, the appointing authority, and the state controller that the employee is being compensated in violation of these rules. (Ref. Sections 67-5308 and 67-5312, Idaho Code) ()

~~**068.—069. (RESERVED).**~~

070. COMPENSATION OF EMPLOYEES.

01. The Hay System. The Division of Human Resources will use the Hay method of point factoring to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code) ()

042. Conduct Of Salary Surveys. The Division of Human Resources shall conduct or approve salary surveys, to determine salary ranges that represent relevant competitive labor market average rates for all Hay point factored positions in ~~the~~ classified service. (7-1-94)()

~~**023. Relevant Labor Markets For Classifications Up To Two Hundred Seventy Points.** For classifications up to two hundred seventy (270) points, the comparator market shall consist of the Idaho in-state market, representing private and public employers in the state. Labor markets used for wage comparison shall be based on the projected hiring market for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. (7-1-94)()~~

~~**a.** When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho. ()~~

~~**b.** For jobs with more regional competition or those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. ()~~

~~**c.** Recruitment and retention issues will be used to determine the need for additional special market surveys. Other surveys may be conducted or obtained to address specialty areas. ()~~

~~**03. Relevant Labor Markets For Classifications From Two Hundred Seventy One To Five Hundred Fifty Points.** For classifications from two hundred seventy one (271) to five hundred fifty (550) points, the comparator market shall be the Idaho in-state market, representing private and public employers, and a group of nine (9) Western State governments, consisting of Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. (7-1-94)~~

~~**04. Relevant Labor Markets For Classifications Above Five Hundred Fifty Points.** For classifications above five hundred fifty (550) points, the comparator market is the nine (9) Western State governments identified in Rule 070.03, and other relevant markets. (3-30-01)~~

054. Salary Schedule. The administrator shall adopt the salary ranges for the pay grades in Section 67-5309C, Idaho Code, ~~which normally represents eighty-five percent (85%) to one hundred twenty-five percent (125%) of the payline policy formulas in Section 67-5309B, Idaho Code,~~ in a public meeting after notice, and a current salary schedule shall be ~~provided to~~ made available to the public and all appointing authorities. (3-30-01)(____)

065. Compensation Plan. Significant changes to components of the compensation plan shall be presented in a public meeting after notice. (3-30-01)

071. COMPENSATION PLAN REVIEWS.

01. ~~Review Of Compensation Schedule.~~ The Division of Human Resources in cooperation with the various appointing authorities shall conduct reviews of the compensation plan. (3-30-01)

02. ~~Affirmation Of Factoring.~~ ~~In the review of classifications, the factoring of a class may be affirmed if there has been no significant change in the duties of the classification and the factoring appears to be correct.~~ (7-1-93)

072. OPERATION OF COMPENSATION PLAN.

01. Authorized Pay Rate. No employee in the state classified service shall be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification, except as provided in ~~Rule 042, and Rules 040.06, and 072.06,~~ and Section 67-5309C(b)(i), Idaho Code. (3-30-01)(____)

02. ~~Entrance Starting Salary.~~ The ~~entrance starting~~ salary for a new appointee ~~shall fall~~ may be anywhere within the paygrade assigned to the employee's classification ~~except when a payline exception is necessary to hire a particularly qualified individual and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries.~~ (Ref. Section 67-5309C(b)(i), Idaho Code) (3-30-01)(____)

03. Payline Exceptions. Temporary assignments to a new pay grade may be made by the administrator pursuant to Section 67-5309(c)(b)(i), Idaho Code. Such assignments shall apply to an entire classification for the purpose of recruitment or retention and shall be reviewed annually to determine the need for continuance. (3-30-01)(____)

04. Salary After Reappointment From Layoff. An employee appointed ~~from a layoff register~~ by the agency that laid them off (Rule 101.01 and Rule 14~~56~~) shall be paid in the current pay grade for the classification to which reappointed or at the same payrate he or she received immediately preceding layoff, whichever is greater but not to exceed the maximum of the current paygrade. (3-30-01)(____)

05. Salary Upon Transfer. (7-10-88)

a. A transfer between departments (Rule 12~~65~~) in the same classification or one (1) of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (3-30-01)(____)

b. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-30-01)(____)

06. Salary Upon Reinstatement. (7-10-88)

a. ~~Except as otherwise provided in the following rule~~ Unless related to reemployment after a lay off, the salary of a reinstated employee (Rule 12~~54~~) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (3-30-01)(____)

07. Salary Upon Downward Reassignment. When a classification is reassigned downward the employee's salary will be protected to the maximum within the new paygrade. ~~If a particularly qualified employee's salary is above the highest rate of the new paygrade, the appointing authority may petition the administrator to~~

~~“freeze” the employee’s salary.~~

~~(3-30-01)()~~

08. Salary Upon Return From Military Duty. An employee who returns to state service from active military duty in accordance with the provisions of Sections 65-511 or 65-512, Idaho Code, shall be paid at the comparable rate in the current pay grade for the classification to which he or she was assigned prior to leaving for military service. (3-30-01)

073. CALCULATION OF PAY.

01. Standard Calculation Of Pay. For other than police, correctional officers, or fire employees, pay shall be calculated in the following order: (3-30-01)

- a. Holiday pay; (12-10-90)
- b. All hours worked on a holiday as overtime; (12-10-90)
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work and traded time; (12-10-90)
- d. Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e. All remaining hours worked at the employee’s regular rate of pay, with the optional use of earned administrative leave. Shift differential pay shall be calculated according to Rule 075 and paid in addition to any other compensation. (Ref. Sections 67-5302(19), 67-5329, Idaho Code; Rules 010.394 ~~through~~ 010.41, 010.5842, 010.48, 010.50 and 073.03 ~~and 250~~) ~~(12-10-90)()~~

02. Calculation Of Pay For Police, Correctional Officers, And Fire Employees. Police, Correctional Officers, and fire employees on a twenty-eight (28) day work schedule shall be compensated as described above, except that overtime shall be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek, and earned administrative leave shall be calculated based on eighty (80) hours in a biweekly pay period instead of on a weekly basis. (3-30-01)

03. Holiday Pay Calculation. (7-1-87)

- a. All classified employees of like classification, shall be treated equally with reference to hours of employment, holidays, and vacation leave. (Ref. Section 67-5326, Idaho Code) (3-30-01)
- b. A full-time employee shall receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee’s schedule is so irregular that a regular workday cannot be determined, the employee shall receive eight (8) hours of holiday pay. An employee must receive ~~pay either the scheduled workday before or after the holiday in order~~ some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. ~~(3-30-01)()~~
- c. A part-time employee who has a regular work schedule shall be paid for a holiday: ~~1) in the same proportion to eight (8) hours that the hours the employee normally works in a week bear to forty (40), which for calculation purposes converts to two tenths (.20) x hours normally worked; or 2) to the extent the employee would have worked had the holiday been a regular workday. The use of method 1) or 2) is discretionary with the appointing authority.~~ ~~(7-1-87)()~~
- d. If a part-time employee’s hourly schedule is so irregular that a normal workweek cannot be determined, ~~an appointing authority may substitute the following method for 1) above:~~ the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs bear to forty (40). ~~(4-5-85)()~~
- e. Schedules resulting in holiday time off in excess of eight (8) hours must only be approved in such a way as to treat all members of the affected job classification equally. Appointing authorities may suspend flex schedules during holiday weeks or may grant administrative leave or otherwise adjust work schedules to ensure

equity. (3-30-01)

04. Reduction Of Salary. The salary of an employee receiving more than the lowest rate of the pay grade for his or her classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. (~~7-1-94~~)(____)

05. Temporary Merit Increases. Temporary merit increases shall not be calculated retroactively. (Ref. Section 67-5309C(b)(ii), Idaho Code) (7-10-88)

06. Department Salary Administration Policies. Each department shall adopt and file with the administrator current salary administration policies for the following actions to insure fairness and equity for all employees within that department: (3-30-01)

- a. Merit increases and bonuses (Section 67-5309C(b), Idaho Code, and Rule 073.05.); (7-1-94)
- b. Reclassification (Rule 067); (4-5-85)
- c. Demotions (Rule ~~180~~ 179); (~~4-5-85~~)(____)
- d. Intradepartmental transfers (Rule 1265); (~~4-5-85~~)(____)
- e. Failure to complete promotional probationary periods (Rule ~~152.03~~ 150.); (~~4-5-85~~)(____)
- f. Promotions (Rule ~~170~~ 169); (~~4-5-85~~)(____)
- g. On-call time (Rule 010.408). (~~4-5-85~~)(____)

07. Salaries For Temporary Appointments. Except as provided by the following rule, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (4-5-85)

074. ASSIGNMENT OF HAY EVALUATION POINTS.

01. Assignment To Pay Grade. Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (~~3-30-01~~)(____)

02. Guide Charts. The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (~~3-30-01~~)(____)

03. Factoring Benchmarks. The factoring benchmarks correlated by Hay Management Consultants shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (~~3-30-01~~)(____)

04. Factoring Process. Hay evaluation points shall be assigned to a classification through the following methods, which may be used separately or in combination with the others: (~~3-30-01~~)(____)

a. Informal Agreement. The appointing authority presents the new or revised classification and factoring recommendation informally to the administrator of the Division of Human Resources or designee and there is agreement on the points assigned. (~~3-30-01~~)(____)

b. Factoring Session. The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and

present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference.

(3-30-01)()

c. Hay Management Consultants. After consultation with the appointing authority, the administrator may refer the classification to Hay Management Consultants for a factoring analysis.

(3-30-01)()

05. **Approval.** After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division of Human Resources shall have final approval of the Hay evaluation points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code.

(3-30-01)()

075. SHIFT DIFFERENTIAL.

01. **Eligibility.** (12-10-90)

a. Shift differential compensation shall be paid if fifty percent (50%) or more of an employee's assigned hours in a workweek occur between 6 p.m. and 7 a.m. Leave hours taken shall be regarded as having been assigned during the same hours that the employee would have worked.

(12-10-90)

b. Shift differential compensation shall be paid for all hours worked by an relief shift employee whose primary responsibility is to work in place of an absent employee and, whose assigned schedule varies from nights, days, and swing during a forty (40) hour work week.

(12-10-90)()

02. **Shift Pay Rate.** Shift differential compensation shall be paid at the rate of five percent (5%).

(7-1-94)

03. **Hours Paid At Shift Rate.** If an employee qualifies for shift differential pay during a workweek, the shift rate shall be calculated for all hours reported in that week, including holiday pay, overtime and leave taken. The resulting amount of shift differential pay shall be included in the compensation for that pay period.

(12-10-90)

04. **Ineligible Employees.** Employees who are ineligible for cash compensation and compensatory time for overtime work are ineligible for shift differential compensation. (Ref. Section 67-5329(1), Idaho Code)

(3-30-01)

05. **Multiple Positions.** For an employee who has more than one (1) position, eligibility for shift differential shall be determined by position.

(2-6-92)

076. ALTERNATIVE WORK SCHEDULES AND LOCATIONS.

An appointing authority may allow alternative work schedules and locations including flexible schedules, job-sharing, and telecommuting when determined to be in the best interests of the state and the employee. Internal policies on such options must be published for all employees and filed with the administrator. If applicable, agency policies must address:

()

a. Conditions of participation; ()

b. Equipment use and provision; ()

c. Workers compensation and liability issues; and ()

d. Confidentiality. ()

077. BONUSES.

01. **Performance Bonuses.** Up to a total of one thousand dollars (\$1,000) may be awarded each fiscal year, in recognition of excellent performance. A memo documenting such performance should be provided to the employee and placed in their personnel file. (Ref. Section 67-5309C(b)(iii), Idaho Code)

()

02. State Resource Savings Bonuses. Up to a total of one thousand dollars (\$1,000) may also be awarded each fiscal year, in recognition of an employee's idea to save state resources. Each agency will develop an internal procedure to provide for prompt consideration and distribution of awards. (Ref. Section 67-5309C(b)(iv), Idaho Code) ()

a. Suggestions, that when implemented result in significant savings, may result in a larger bonus, but such amounts must be approved by the Board of Examiners. ()

b. Suggestions aimed at saving money outside the employee's state agency should be submitted to the employee's agency first and then routed to the Division of Human Resources for centralized coordination and tracking. The Division of Human Resources will forward the suggestion to the agency able to address implementation. ()

0768. -- 079. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

082. METHODS OF RECRUITMENT.

For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, ~~and~~ department promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. (3-30-01)()

083. ~~LOCATION OF EXAMINATIONS (RESERVED).~~

~~When the administrator determines it to be in the best interest of the personnel system, examinations may be held in specific areas of the state, by approved proctors outside the state of Idaho, or via electronic communications.~~ (3-30-01)

084. ANNOUNCEMENT OF ~~EXAMINATIONS~~ RECRUITMENT.

01. Distribution Of Announcements. The announcement of each open-competitive ~~examination recruitment~~ shall be supplied to the appropriate local offices of the Idaho Department of Labor and to other locations determined necessary by the administrator to develop a register of eligibles. If the open-competitive ~~examination recruitment~~ has been requested by the appointing authority in lieu of a promotional ~~examination recruitment~~, it shall be his or her responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that department prior to its expiration date. (Ref. Rule ~~17069-01.b-~~) (4-5-85)()

02. Posting Of Promotional Announcements ~~Within Departments~~. The announcement for each promotional ~~examination recruitment~~ shall be supplied to the appointing authority of each affected department. It shall be his or her responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the department prior to the expiration date. (4-5-85)()

085. CONTENT OF ANNOUNCEMENTS.

Each announcement ~~of an examination~~ shall contain the title of the classification, characteristic duties and responsibilities, salary, minimum qualifications, nature of ~~the~~ examination, ~~relative weights of the various portions of the examination~~, qualifying score, closing date, equal opportunity employer, veterans preference and other pertinent information. (4-5-85)()

086. APPLICATIONS.

01. Form. All applications shall be filed ~~on~~ in the form prescribed by the administrator. ~~A separate form must be filed for each class for which application is made unless otherwise prescribed in the announcement.~~ (8-1-81)()

02. Filing Of Applications. Applications are currently accepted by internet application system, mail, personal delivery, electronic mail and FAX to the Division of Human Resources. ~~Whenever applications are filed by electronic mail or FAX, the original shall be deposited in the mail the same day or hand delivered the following day.~~ An application will also be considered timely if any Job Service or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources, and ensures that it is delivered to the Division of Human Resources by close of the next business day. (3-30-01)(____)

03. Application By Military Personnel. An application ~~for examination~~ will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing hospitalization of no more than one (1) year following discharge, during any period in which the ~~examination~~ announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of ~~the an~~ examination. The applicant must be a resident of Idaho when application is made. (Ref. Sections 65-502 and 67-5309(f), Idaho Code) (4-5-85)(____)

04. ~~Examination Of~~ Application By Disabled Veterans. A disabled veteran may file an application ~~for examination~~ at any time for any classification for which the Division of Human Resources maintains a register or for which a register is about to be established, provided he or she has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a classification in the same or higher pay grade as the classification for which application is made. The applicant must be a resident of Idaho when application is made. (Ref. Sections 65-502, 65-507 and 67-5309(f), Idaho Code) (4-5-85)(____)

05. Promotion Of Entrance Probationary Employee. Any classified employee on entrance probation may file an application for a promotional opportunity ~~but may not be~~ and placed on a register ~~but may not be appointed~~ until permanent status has been attained. Although on a register, as probationary, the employee's name does not count in the top ten (10) candidate ranking. (Ref. Rules 16059.01. and 17069.03.) (7-1-87)(____)

06. Disclosure Of Information For Hiring Purposes. By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 9-340C, Idaho Code). (12-10-90)

087. DENIAL OF APPLICATIONS.

01. Basis. The administrator may choose not to process an application ~~for examination~~ if: (3-30-01)(____)

a. The applicant will not meet the minimum qualifications specified in the announcement at the time set for appointment. (3-30-01)

b. The application was not received on or before the closing date for acceptance of applications. (3-30-01)

c. A background investigation or examination of an applicant discloses that the applicant committed an act which is cause for dismissal as provided in Rule 190. (3-30-01)

02. Further Actions. When any such finding under Rule 087.01 is made, the administrator may deny the application and may cancel the eligibility of the applicant if he or she has already attained a place on the eligibility register. If the applicant has already received appointment, the administrator may take appropriate action to have the employee removed from the position. (3-30-01)

088.—089. (RESERVED).

089. LOCATION OF EXAMINATIONS.

To enhance recruiting efforts, agencies may request examinations be held in specific areas of the state, by approved proctors outside the state of Idaho, or via electronic communications. (____)

(BREAK IN CONTINUITY OF SECTIONS)

093. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.

01. Designation Of Examiners. The examinations shall be conducted and rated by persons designated by the administrator. (8-1-81)

02. Scoring Of Examinations. Each examination shall be rated for final scores on the basis of one hundred (100) point maximum. The Division of Human Resources' staff shall use appropriate statistical and professional techniques and procedures in determining passing points and final scores. (3-30-01)

03. Veterans² Preference. (~~4-5-85~~)(____)

a. Veterans² and disabled veterans² points, when applicable under state law, shall be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. Veterans² preference points are only applicable when the applicant is a resident of Idaho. (Ref. Sections 65-502 and 67-5309(f), Idaho Code) (~~4-5-85~~)(____)

b. Veterans² and disabled veterans² preference points shall not be added to the raw score in order to achieve a passing score. (~~4-5-85~~)(____)

04. Failing Score. Failure in any part of the examination may disqualify the applicant in the entire examination and from having his or her name placed on the register. Final scores shall be computed in accordance with weights assigned the individual factors in the total examination. (4-5-85)

05. Use Of Alternate Announcement. An examination may be rated for another classification under current announcement at the discretion of the administrator. (~~4-5-85~~)(____)

06. Waiver Of Examination. Notwithstanding other provisions in these rules, when ten (10) or fewer applications are received from applicants meeting minimum qualifications for a position announcement and there is no existing register, the announced examination may be waived by the administrator. ~~These A~~ applicants ~~meeting minimum qualifications~~ shall be eligible for appointment and their placement on the register shall take into account veterans' preference. When using registers developed in this manner, appointing authorities shall provide the opportunity for placement interviews for each applicant on the register. (~~3-30-01~~)(____)

07. Examination Upon Reclassification. An employee occupying a position which is reclassified (Rule 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified. (~~4-5-85~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

095. NOTICE AND RECORD OF RESULTS OF EXAMINATION.

All competitors shall be notified ~~by mail~~ of their final scores electronically or by mail. The records of scores shall be held as official records for the life of the resulting eligibility registers. (~~3-30-01~~)(____)

096. REVIEW AND APPEAL.

01. Review Of Examination Content And Scoring Material. Any competitor, or his/her representative authorized in writing, shall be permitted to inspect his/her own papers and records, except examination content and scoring material, upon application in person at the office of the Division of Human Resources in Boise during business hours. Alternative arrangements are available for competitors located outside of Boise. Review shall be limited to the time allowed for appeal of examination scores. (~~3-30-01~~)(____)

02. Appeal Of Examination Score. Any competitor, by written request to the administrator, may appeal his or her examination score within thirty-five (35) calendar days after the notice was ~~mailed~~ sent to such competitor. The administrator shall review the test, may change the score, and may take any other action necessary to insure the integrity and quality of the testing process. When such review discloses error affecting the scores of other competitors, the review and adjustment shall include their scores. The administrator shall provide a written explanation to competitors whose scores are affected by the action taken. (3-30-01)(____)

097. ALTERNATIVE EXAMINATION PROCESS FOR PERSONS WITH DISABILITIES.

01. Conditions For Eligibility. Notwithstanding other provisions in these rules, an agency may appoint an individual directly into entrance or promotional probationary status in a classification if the Division of Vocational Rehabilitation, the Idaho Commission for the Blind, or the Industrial Commission certifies the following: (7-1-93)(____)

a. That the individual has a physical or mental impairment that substantially limits one (1) or more major life activities, as further defined under state or federal law; (3-30-01)

b. That the individual meets the minimum qualifications of the classification and is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (7-1-93)(____)

c. That the individual lacks competitiveness in the examination process due to the disability. (Ref. Section 67-5309(e), Idaho Code.) (3-30-01)(____)

02. Concurrence Required. The certification shall be made with the concurrence of Division of Human Resources. (3-30-01)

03. Probationary Period. The probationary period shall be the sole examination for individuals certified under this alternative examination process. (Ref. Rule 150). (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. TYPES OF ELIGIBILITY REGISTERS.

There are four (4) kinds of eligibility registers: (4-5-85)

01. Layoff Reemployment Preference Registers. ~~Departmental layoff~~ Registers with reemployment preference shall for a given classification contain the names of classified employees of permanent ~~or probationary~~ status who have been laid off ~~or demoted because of shortage of work or funds, reorganization, or abolishment of a position. Ranking on such register is to be made in accordance with Rule 146, governing employee preference except limited service appointments.~~ (See Rule 140). (4-5-85)(____)

02. Departmental Promotional Registers. Departmental promotional registers shall for a given classification contain the names of classified employees ~~with permanent status~~ in a given department who successfully passed a departmental promotional examination for the class. (Ref. Rule 086.05) (4-5-85)(____)

03. Statewide Promotional Registers. Statewide promotional registers shall for a given classification contain the names of all classified employees ~~with permanent status~~ in all state departments who successfully passed a statewide promotional examination for the class. (Ref. Rule 086.05) (4-5-85)(____)

04. Open Competitive Registers. Open competitive registers shall for a given classification contain the names of applicants who successfully passed an open-competitive examination for the classification. (4-5-85)(____)

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates shall be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. ~~(3-30-01)~~(____)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference shall be placed on the open-competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule 093.03, and Section 65-506, Idaho Code) ~~(3-30-01)~~(____)

03. Disabled Veterans' Preference. Eligible disabled veterans or surviving spouses entitled to ten (10) point preference shall be placed at the top of the open-competitive register above all other candidates in order of their final score on the examination augmented by preference points. (Ref. Rule 093.03, Section 65-605, Idaho Code) (3-30-01)

04. Veterans' Preference For Initial Appointment Only. The additional points added by reason of veterans' preference shall be used ~~for initial appointment~~ the first time a qualified veteran is hired by a state agency and not for the purpose of promotions ~~in classified service~~. (Ref. Section 65-506, Idaho Code) ~~(3-30-01)~~(____)

103. DURATION OF ELIGIBILITY REGISTERS.

01. Eligible Candidates. Eligible candidates on ~~layoff~~ registers indicating reemployment preference due to layoffs will remain thereon for ~~twelve~~ eighteen (128) months. (Ref. Rule 101.01) ~~(3-30-01)~~(____)

02. Duration. The duration of all other registers will be determined by the administrator based on the frequency of job openings and agency need. (3-30-01)

104. REMOVAL OF NAMES.

01. Reasons Specified. Names may be removed from any eligibility register(s) by the administrator because of: ~~(4-5-85)~~(____)

a. Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. ~~(3-30-01)~~(____)

b. A statement by the eligible candidate that he or she is not willing to accept appointment under conditions previously specified. ~~(3-30-01)~~(____)

c. Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. ~~(3-30-01)~~(____)

d. Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. ~~(4-5-85)~~(____)

e. The eligible candidate's conduct renders him or her unsuitable for ~~a~~ the position in the state service or classification for which he or she applied. ~~(3-30-01)~~(____)

f. Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-30-01)

g. Conviction of an eligible candidate of any felony. (3-30-01)

h. False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-30-01)

i. Dismissal of an eligible candidate from state service. (3-30-01)

j. Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. ()

k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he or she is not entitled. ()

l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. ()

m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same department and not been accepted for employment for good cause. ()

n. Declining three (3) separate offers of employment or reemployment without good cause. ()

02. ~~**Removal For Improper Influence.** The administrator may remove from an eligibility register the name of any person who has paid, promised to pay, or given any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment; or any person who has directly or indirectly obtained information regarding examinations to which, as an applicant, he or she is not entitled.~~ **Limitations And Duration Of Removal.** The administrator shall determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator. (4-5-85)()

~~**03. Refusal Of Interview Or Position.** Any eligible candidate who refuses an interview or refuses to accept a position under the conditions set forth in the examination announcement may have his or her name removed from the eligibility register by the administrator. (3-30-01)~~

~~**04. Removal Of Names.** If the name of an eligible candidate has been certified for a probationary appointment for three (3) separate positions in the same class in the same department and has not been accepted for good cause, an appointing authority may request in writing to the administrator that the candidate not be certified to that department again for that class. (7-1-87)~~

~~**05. Removal For Declining Three Offers.** Upon written petition from an appointing authority, an employee's name may be removed from a departmental layoff register if the employee declines three (3) separate offers of reemployment without good cause. (Ref. Rule 101.01) (7-1-87)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~107. ABOLISHMENT OF CLASSES.~~

~~Whenever a class is abolished, names on existing eligibility registers for the class may be combined with names on a comparable register providing the candidates meet the minimum qualifications for the class represented by the comparable register. (4-5-85)~~

~~1087. REVISION OF CLASSIFICATION SPECIFICATIONS.~~

~~Whenever a classification specification is revised, the names of persons on the existing eligibility register who meet the minimum qualifications for the revised classification shall be placed in score order on the eligibility register for the revised classification. (4-5-85)()~~

~~1098. (RESERVED).~~

~~1402. CERTIFICATION AND SELECTION.~~

~~Whenever a vacancy in a classified position is to be filled by ~~the~~ a competitive ~~examination~~ recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division of Human Resources' staff. Internal agency transfers or reinstatements do not require registers certified by the Division of Human Resources. (4-5-85)()~~

1140. NUMBER OF NAMES ON REGISTER.

The Division of Human Resources' staff shall certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority shall be able to select for appointment from among ten (10) eligible candidates successively for each position to be filled. If an appointment is to be made to one (1) position only, the top ten (10) available eligible candidates shall be certified. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority shall have ten (10) names to consider for each vacancy. The names of all eligible candidates with scores identical to the tenth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes.

~~(3-30-01)~~(____)

1121. ADEQUATE REGISTERS.

A register with at least five (5) eligible candidates shall be adequate. If no register exists or if there are less than five (5) eligible candidates, appointing authorities may:

(3-30-01)

- 01. Selection From Inadequate Register.** Hire an eligible candidate listed on an inadequate register. (3-30-01)
- 02. Provisional Appointment.** Make a provisional appointment pursuant to Rule 120.05. (3-30-01)
- 03. Request Certification.** Request the administrator authorize certification from an eligibility register for a comparable classification. ~~(3-30-01)~~(____)
- 04. Special Request.** Request specialized recruitment. (3-30-01)

1132. SELECTIVE CERTIFICATION.

The administrator may authorize selective certification from a register where specific qualifications for a position are justified by an appointing authority in addition to the minimum qualifications for the classification. ~~(4-5-86)~~(____)

1143. -- 1148. (RESERVED).

12019. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

- 01. Form.** Appointing authorities shall notify the administrator of each appointment on the prescribed form. (2-6-92)
- 02. Layoff Reemployment Preference Register.** New appointments to a classification within a department are not permissible if there is a departmental layoff reemployment preference register (Rule 101.01) for that classification with names of eligibles who are willing to accept employment. ~~(3-30-01)~~(____)
- 03. Credited State Service.** Except as provided by Rules 040 and 250.02, no classified credited state service shall accrue to employees for any service under temporary, project exempt, or nonclassified appointments. (7-1-87)
- 04. Probationary Period Required.** All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification shall be probationary appointments except as otherwise provided in Rules 040, and 150. ~~(3-30-01)~~(____)
- 05. Provisional Appointment.** (7-1-93)
 - a.** A provisional appointment may be authorized in the absence of an adequate register ~~of eligibles. A provisional appointment will not be authorized if the announcement for the position is closed pending establishment of a register.~~ ~~(4-5-85)~~(____)
 - b.** In nominating a person for provisional appointment, the appointing authority shall transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position

for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position shall not be permitted unless specifically authorized by the administrator. (4-5-85)(____)

c. Provisional incumbents shall be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not ~~availed himself or herself thereof~~ done so shall be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (4-5-85)(____)

~~d.~~ *A period of provisional service immediately prior to an employee's probationary appointment from an eligibility register shall be credited to the probationary period. (Ref. Rule 154) (4-5-85)*

1240. LIMITED SERVICE APPOINTMENTS.

01. ~~Length Of Limited Service.~~ *Limited-service appointments (ref. Rule 010.04 for definition) are restricted to six thousand two hundred forty (6,240) hours of credited state service for non-career positions of relatively short duration.* **Designation.** Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. (4-5-85)(____)

02. ~~Conversion To Permanent Status And Expedited Layoff.~~ Employees appointed under limited-service appointments ~~will automatically convert to career employees with permanent status if employed in limited-service appointments in excess of six thousand two hundred forty (6,240) hours~~ have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Rule 140.03.c. (4-5-85)(____)

03. **Limited Service Agreement.** Appointing authorities making limited-service appointments shall prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and/or updated agreements are required every two (2) years. A copy of ~~this~~ the agreement shall be submitted to the administrator. (12-10-90)(____)

1221. SEASONAL APPOINTMENT.

01. **Purpose.** An appointing authority may make a seasonal appointment from a register for work that occurs intermittently during the year. (Ref. Idaho Code Section 67-5302(301), Idaho Code). (12-10-90)(____)

02. **Employee Rights.** Employees appointed under a seasonal appointment will have all obligations, rights, and privileges of any classified employee except those accorded by Rules 140 through 1478, relating to reduction in force. (12-10-90)(____)

03. **Separation.** Employees appointed under a seasonal appointment may be separated from the seasonal appointment and returned ~~hereto~~ as frequently as intermittent workload dictates. (12-10-90)(____)

04. **Duration Of Appointment.** If an employee has not been called to work for six thousand two hundred forty (6,240) hours (three (3) years), the seasonal appointment expires; rehire of the employee must be from a register. (12-10-90)

1232. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

Temporary appointments shall be limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one (1) department. Both calculations shall begin on the date of the original temporary appointment. An applicant who is hired as a temporary employee from a hiring list created from a certified register, and serves at least one thousand forty (1,040) hours of continuous service, may be hired by the employing agency into that position in classified service as an entrance probationary employee without further examination. The announcement for the temporary position from which the certified register was created must indicate that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (Ref. Section 67-5302(323), Idaho Code); ~~for~~ *definition.* (7-1-87)(____)

1243. PROJECT-EXEMPT APPOINTMENTS (NON-CLASSIFIED).

Project-exempt appointments are non-classified positions and shall be limited to the length of the project grant or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is shorter. (Ref. Section 67-5303(m), Idaho Code). *for definition.* (4-5-85)(____)

125. REINSTATEMENTS.

01. Eligibility. As determined by the administrator, a current or former employee shall be eligible for reinstatement to a classification in which he or she held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions (salary treatment is covered by Rule 072.05). (3-30-01)(____)

a. Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-30-01)

b. The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (4-5-85)(____)

c. The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. (4-5-85)(____)

02. Reinstatement Prohibited. Reinstatement of a current or former employee is not permissible as long as there is a departmental layoff register (Rule 101.01) for ~~the~~ that classification with names of eligibles who ~~are~~ willing to accept have reemployment preference status. (4-5-85)(____)

03. Examination. The administrator may require a current or former employee to pass an examination for the classification to which reinstatement is desired. (4-5-85)(____)

04. Probationary Period. An appointing authority may negotiate for a probationary period as a condition of reinstatement except as provided in Rule 1254.05 or when hiring off a layoff register with reemployment preference status. (3-30-01)(____)

05. Return From Military Duty. An employee returning from military leave without pay (Rule 250.05) who is relieved or discharged from military duty under conditions other than dishonorable shall be, upon application, reinstated in his or her former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-511 and 65-512, Idaho Code, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made within ninety (90) calendar days after separation from military duty or from hospitalization continuing after discharge up to one (1) year. Salary treatment is covered by Rule 072.08. (3-30-01)

1265. TRANSFERS.

01. Authority To Transfer. An appointing authority may transfer an employee at any time from one position to another in the same classification. (4-5-85)(____)

02. Transfer Within Pay Grade. An appointing authority may transfer an employee from a classification in which he or she holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. (4-5-85)(____)

03. Probationary Period. An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. Voluntary probation is not allowed for intradepartmental transfers. (Ref. Rule 150.02). (3-30-01)(____)

04. Limitation. Transfers shall not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 1478. (7-1-87)(____)

05. Transfer Between Departments. An employee shall be eligible for transfer between departments in the same classification in which he or she holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. Accrued vacation and sick leave shall be transferred in accordance with Rules 230.04 and 240.02. Salary treatment is covered by Rule 072.04. ~~(7-1-87)~~()

06. Restriction. Transfer of an employee between departments is not permissible as long as there is a departmental ~~layoff~~ register with reemployment preference status (Rule 101.01) for the classification in the department to which transfer is desired with names of eligibles who are willing to accept reemployment. ~~(4-5-85)~~()

07. Examination. The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired. ~~(4-5-85)~~()

08. Involuntary Transfer. Due process must be given to any employee subject to an involuntary transfer. (Ref. Rules 010.39 and 200.01.a.). ()

1276. RESIGNATION.

01. Notice. A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the department. (6-11-89)

02. Rescission And Reinstatement. Once an employee has submitted a resignation, reinstatement is in the discretion of the department as provided in Rule 1254. The department may but is not required to allow an employee to rescind a resignation prior to its effective date. ~~(6-11-89)~~()

03. Resignation In Lieu Of Dismissal. An employee may resign in lieu of being dismissed for cause. (7-1-93)

~~1287.~~ -- ~~1298.~~ (RESERVED).

~~13029.~~ ACTING APPOINTMENT TO A POSITION.

01. Conditions For Acting Appointment. At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his or her own department in an acting capacity whenever: ~~(7-10-88)~~()

a. The incumbent of the position in the higher classification is on authorized leave of absence; or ~~(7-10-88)~~()

b. A vacancy exists and there is no departmental ~~layoff~~ register with reemployment preference status (Rule 101.01) with names of eligibles who are willing to accept reemployment, nor adequate departmental register for the classification. ~~(7-10-88)~~()

02. Minimum Qualifications. To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. (4-5-85)

03. Notification. Appointing authorities shall notify the administrator of each acting appointment ~~on the prescribed form~~ no later than the effective date of the appointment unless an exception is specifically authorized by the administrator. ~~(2-6-92)~~()

04. Effective Date. The effective date of each ~~active~~ acting appointment may be retroactive to the beginning of the pay period during which approval is granted. ~~(3-30-01)~~()

~~1340.~~ LIMITATION ON LENGTH OF APPOINTMENT.

~~Such~~ Acting appointments shall be limited to the period of time necessary to fill the vacancy pursuant to procedures

prescribed in these rules but in no case shall continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. (4-5-85)(____)

1321. SALARY.

For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. (4-5-85)(____)

1332. EXPIRATION OF APPOINTMENT.

01. Return Of Incumbent. When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment shall expire. The acting appointee shall be returned to the class, the pay grade and rate held immediately preceding the acting appointment. (7-1-94)(____)

02. Failure Of Incumbent To Return. Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 1340. (4-5-85)(____)

~~**03. Probationary Period Upon Promotion.** The time served in an acting appointment immediately preceding an employee's promotion from an eligibility register to the class shall be credited to the employee's probationary period. (Ref. Rule 154) (4-5-85)~~

1343. -- 139. (RESERVED).

140. REDUCTION IN FORCE.

01. Conditions For Layoff. An appointing authority may lay off an employee whenever ~~it is~~ necessary ~~because of~~ due to: (____)

a. ~~§~~Shortage of funds or work; (____)

b. ~~†~~Reorganization; (____)

c. The end of a limited service appointment; (____)

d. An employee's failure to complete interagency promotional probation when demotion options are not available; or (____)

e. ~~‡~~The abolishment of one (1) or more positions (ref. Rule 066). ~~A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to a lower pay grade shall not constitute a layoff (ref. Rule 067). A reduction in the number of hours worked for a selected position or positions shall constitute a layoff unless there is an equal reduction of hours worked for all positions within the department or within the organizational unit approved pursuant to Rule 140.02.~~ Layoffs shall be accomplished in a systematic manner with equity for the rights of classified employees and shall not ~~abrogate~~ do away with an employee's right ~~of grievance~~ to problem solving, review, or appeal if the layoff is in fact a dismissal. (4-5-85)(____)

02. Assessment For Adverse Impact. Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability or political affiliation. In planning and conducting a reduction in force, the appointing authority shall consider the effect of decisions, such as establishment of layoff units and selection of classifications containing positions to be abolished, on the composition of the work force of the agency. If layoff units and/or exclusions are established, adverse impact will be assessed as recognized in state and federal laws, rules and guidelines. The appointing authority shall take appropriate action consistent with state and federal laws, and rules and guidelines governing adverse impact. (____)

~~**043. Layoff By Position.** Reduction in force shall be by classification of position regardless of class of incumbent.~~ (4-5-85)(____)

a. Reduction in force may be limited to or specifically exclude employees appointed under selective

certification, (Rule 113~~2~~) for bona fide occupational qualifications, or appointed ~~under specific options or to a classification with~~ minimum qualification specialties ~~in a class~~. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (7-1-93)()

b. ~~Reduction in force for employees in limited service appointments shall be limited to the program or function for which the appointments were made. An appointing authority may petition the administrator to exclude an individual or individuals from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale and be approved in advance by the administrator.~~ (4-5-85)()

c. ~~Reduction in force for employees in seasonal appointments will be governed by workload fluctuations and has no applicability under this rule. (Ref. Rule 122). Limited-service appointments are defined by the project, the program, or function for which the appointments were made. If a reduction in force relates to a limited service project conclusion and agreement, the limited service appointee may not displace other employees with fewer retention points. (Ref. Rule 120). Other permanent employees may not displace limited service appointees in a reduction in force.~~ (12-10-90)()

024. Layoff Unit. Reduction in force shall be department-wide or by organizational unit determined by the appointing ~~authority provided the organizational unit designation for layoff purposes is made by the appointing~~ authority and approved by the administrator before the effective date of the layoff. (4-5-85)()

05. Reduction Of Hours Worked. An involuntary reduction in the number of hours worked for a selected position or positions shall constitute a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the department or approved organizational unit for a limited period of time, i.e. furlough. ()

06. Downward Reclass. A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to a lower pay grade shall not constitute a layoff. (Ref Rule 067). ()

03141. CALCULATION OF RETENTION POINTS.

There shall be ~~competition among~~ an evaluation of all employees in the classification in the department or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations and credited state service. Qualified war veterans are given preference through additional retention points. (Ref. Rule 210141.05) as follows:

01. For Performance Evaluations Conducted Before March 31, 2001:

Performance Level	Retention Points Earned Per Hour of Credited State Service
Superior or equivalent	.100
Very Good or equivalent	.075
Satisfactory or equivalent	.050
Needs Improvement or equivalent	.000
Unsatisfactory	.000

(7-1-87)()

02. For Performance Evaluations Conducted After March 31, 2001, the appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Does Not Achieve Performance Standards Overall Rating	No Points
Achieves Performance Standards (APS) with narratives describing satisfactory performance in some, but not all, required core areas.	.025
APS rating with no or minimal documentation.	.075
APS rating with narratives describing competent performance.	.100
APS rating with narratives describing performance that exceeds expectations.	.125
APS rating with narratives describing outstanding performance.	.150

()

03. No Performance Evaluation On File For A Twelve-Month Period. All credited state service before March 31, 2001, for which there is no performance evaluation shall receive .050 points per hour. All credited state service after March 31, 2001 for which there is no performance evaluation shall receive .075 points per hour. (4-5-85)()

04. Calculation Of Retention Points Since Last Evaluation. The most recent performance evaluation should be used as the multiplier when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points shall be calculated in conformance with Rule 141.03. ()

05. Qualified War Veterans Preference. War veterans as defined in Chapter 5, Title 65, Idaho Code, shall receive an ~~bonus of additional three four~~ hundred ~~twelve sixty-eight~~ (312468) retention points ~~which is equivalent to three (3) years of satisfactory service.~~ (4-5-85)()

~~e. No points shall be calculated for the last three (3) months prior to a reduction in force.~~ (4-5-85)

~~04. Audit Of Retention Points.~~ Each employee shall be entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor shall be binding on both parties unless an appeal is filed within thirty five (35) calendar days from the date of the auditor's notification to the affected parties. (7-1-87)

142. CREDITED STATE SERVICE.

Eligible credited state service for purposes of Rule 140 is defined as follows: (4-5-85)

01. Service Prior To State Personnel System. All credited state service prior to the establishment of classified service, Chapter 53, Title 67, Idaho Code. (Ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions of credited state service) (4-5-85)

02. Classified Service. All classified credited state service since the establishment of classified service. (4-5-85)

~~03. Nonclassified Service.~~ All credited state service in a position exempt from classified service if that position is subsequently transferred to classified service pursuant to Rule 040. (7-1-87)

~~04. Leave Of Absence From Classified Service.~~ All credited state service, in a leave of absence from classified service, that a classified employee serves in a nonclassified position. Limitations are contained in Rules 250.02.a. and 125.01.a. (7-1-87)

143. AUDIT OF RETENTION POINTS.

Each employee shall be entitled to an audit of retention points by an independent auditor designated by the

administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor shall be binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. ()

1424. ~~PROCEDURE~~ REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.

01. Identification Of Classifications. The appointing authority shall identify the classification(es) of positions to be ~~affected by layoff and the organizational unit if applicable under Rule 140.02~~ eliminated. (4-5-85)()

02. Calculation Of Retention Points. Retention points shall be calculated for all employees assigned to the classification of position including those serving in underfill positions (Ref. Rule 010.60 or acting appointments (Ref. Rule 130). ~~Employees on approved leave of absence without pay shall not be included (Ref. Rule 142.04).~~ Retention points need not be calculated where layoff involves a single-incumbent class. (7-1-87)()

03. Order Of Reduction In Force. The order of reduction in force shall be by type of appointment held by the employee in the affected classification(es) as follows: first to be laid off are provisional appointees, next the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees shall be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs shall be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention shall be determined in the following sequence: (Ref. Rule 150.02.c.) (3-30-01)()

a. The employee with the highest ~~overall average performance credit~~ (total retention points ~~divided by total credited state service~~) for the past thirty-six (36) months. (4-5-85)()

b. Random selection. (4-5-85)

04. ~~Employee Returning From Leave Of Absence.~~ ~~An employee returning from a leave of absence without pay to a class for which a layoff register exists will be laid off in accordance with these rules if there are employees on the layoff register for the class with more retention points (Ref. Rule 142.02).~~ **Notification To Administrator.** The appointing authority shall provide documentation of the layoff decision-making process to the administrator at least twenty (20) calendar days prior to the effective date, including a list of all employees considered for layoff and the outcome. (7-1-87)()

05. Notification Of To Affected Employees. Each employee affected shall be notified in writing of layoff and ~~reasons therefor~~ the rationale for the decision at least fifteen (15) calendar days prior to the effective date of the layoff. Notification shall include a copy of the departmental layoff procedure and a copy of the computation of retention points when required (Ref. Rule 142.02). (4-5-85)()

06. ~~Notification To Administrator.~~ ~~The appointing authority shall give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and shall provide a list of persons affected by the layoff with their retention point calculations and shall indicate which employees will be laid off.~~ (4-5-85)

143. ~~VOLUNTARY DEMOTION IN LIEU OF LAYOFF.~~

~~An employee with permanent status, may, in lieu of layoff, elect voluntary demotion to a class, or if deleted, its successor, in which the employee held permanent status in the department. Such demotion shall not be permitted, however, if the result would be to cause the layoff of an employee with permanent status with greater retention points. To exercise the right of voluntary demotion in lieu of layoff, the employee must notify the appointing authority in writing of such election no later than five (5) working days after receiving notice of layoff.~~ (7-1-94)

1445. PLACEMENT ON ~~LAYOFF~~ REGISTER WITH REEMPLOYMENT PREFERENCE.

An employee ~~who elects a voluntary demotion in lieu of layoff or an employee~~ laid off from state service, ~~under these rules or who chooses a voluntary demotion in lieu of a layoff,~~ shall be placed on a ~~layoff~~ register (~~Rule 101.01~~) in accordance with Rule 146 with reemployment preference in unranked order for ~~one~~ eighteen (18) ~~year~~ months from the effective date of ~~demotion or~~ layoff, or until the employee or former employee declines a total of three (3)

separate offers of reemployment without good cause, whichever comes first. (Rule 104.051.n.) ~~(3-30-01)~~()

1456. USE OF ~~LAYOFF~~ REGISTERS WITH REEMPLOYMENT PREFERENCE REQUIREMENTS.

01. ~~Offer Of Priority For Reemployment By Agency That Conducted The Layoff.~~ ()

a. ~~An~~ The employee on a layoff register who has been laid off, or officially notified of a pending layoff date (Ref. Rule 144.05) shall be offered reemployment to a position in the classification from which laid off, before any other person may be promoted, transferred, reinstated, reclassified or appointed, including acting appointment, to such classification by the an appointing authority enforcing the layoff of that department or agency. Appointing authorities in other departments are only required to offer an interview. (Ref. Rule 101.01) may reassign or transfer individuals who are in the same classification within their department. (Ref. Rule 125.04 and 125.08) ~~(3-30-01)~~()

b. When attempting to fill vacancies for a classification where a lay off occurred, the department or agency shall provide an opportunity to interview and shall make their hiring selection among the individuals from their agency laid off from the classification, including those separated from state service under Rule 150.02 and those that took a voluntary demotion in lieu of layoff. ()

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary and their sick leave balance restored. If the pay minimum has increased, see Rule 072.04. ()

02. ~~Optional Return To Layoff Register.~~ *When an employee is appointed from a layoff register, but finds the position unsatisfactory, they may resign, and request recertification to the layoff register for the remainder of their twelve (12) month eligibility period.* **Consideration For Hire By Other Agencies. Individuals who have been laid off must be offered the opportunity to interview before other agencies consider open competitive register candidates. Internal agency candidates for promotional opportunities are normally considered before outside recruitment occurs, including other agencies' laid off candidates. ~~(3-30-01)~~()**

03. ~~Employment By Other Agency.~~ Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. ()

04. ~~Return To Register.~~ If an individual finds another agency's position unsatisfactory or does not meet performance expectations during a voluntary probation period, he or she may be placed back on a register for the remainder of their eighteen (18) month time frame. Individuals appointed from a register to a position other than the classification from which laid off, will remain on the register for the classification from which laid off for the remainder of the eighteen (18) month period if otherwise eligible. ()

146. ~~APPLICATION OF REEMPLOYMENT PREFERENCE.~~

01. ~~Reemployment Rights.~~ *Reemployment preference from layoff registers shall be determined by retention points in rank order from highest to lowest within each of the following categories of employees (salary treatment is covered by Rule 072.03):* ~~(4-5-85)~~

a. ~~Employees with permanent status in the class.~~ ~~(4-5-85)~~

b. ~~Promotional probationary employees who have permanent status in a class allocated to a lower pay grade.~~ ~~(4-5-85)~~

c. ~~Probationary employees without permanent status in any class.~~ ~~(4-5-85)~~

02. ~~Exception.~~ *Employees who have neither probationary nor permanent status in a class affected by a layoff, and employees serving in limited-service appointments have no preference for reemployment, and their names shall not appear on a layoff register.* ~~(7-1-87)~~

147. INTERVIEWS FOR PROSPECTIVE LAYOFFS.

Any ~~Employees~~ who has been notified or identified as likely to be affected by a layoff ~~shall~~ may request to be placed on a register for the classification from which the layoff will occur. (Ref. Rule 146.01.a.) ~~Departments attempting to fill such vacancies~~ All agencies, shall offer an interview to these individuals when attempting to fill such vacancies.

~~(3-30-01)~~(____)

148. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.

An employee with permanent status, may, in lieu of layoff, elect voluntary demotion to a classification within their layoff unit, or if deleted, its successor, in which the employee held permanent status in the department. Such demotion shall not be permitted, however, if the result would be to cause the layoff of an employee with permanent status with greater retention points.

(____)

01. Eligibility. Employee must meet the classification's current minimum qualifications and any minimum qualification specialities required. Limited service appointees are not eligible.

(____)

02. Acceptance. To exercise the right of voluntary demotion in lieu of layoff, the employee must notify the appointing authority in writing of such election no later than three (3) working days after written notification of the pending layoff.

(____)

~~148.~~—149. (RESERVED).

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Rule 040, every appointment and promotion to a classified position shall be probationary, or in the absence of adequate registers, provisional.

(7-1-87)

02. Types Of Probationary Periods. The probationary period serves as a working test period to provide the department an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods:

(3-30-01)

a. Entrance probation is the probationary service required of an employee at the time of his or her original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which shall be one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who shall serve two thousand eighty (2,080) hours.

(3-30-01)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which shall be one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who shall serve two thousand eighty (2,080) hours.

(3-30-01)

c. Voluntary probation is the probationary period negotiated between employees seeking inter-agency transfer, voluntary demotion, and/or reinstatement and the hiring authority. The probationary period is negotiable but shall may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. Voluntary probation agreements must be approved by the administrator and kept on file with the Division for the duration of the probationary period.

~~(3-30-01)~~(____)

03. Extension Of Probationary Period. Upon petition by an appointing authority that demonstrates good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Petitions must be received by the administrator before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers.

~~(7-1-94)~~(____)

04. Interruption Of Probationary Period. The probationary period in any classification must be completed within a single department uninterrupted by resignation, termination (Ref. Rule 152.02) or dismissal (Ref. Rule 190). An employee who separated ~~by means other than layoff~~ during the probationary period must begin a new

probationary period upon reappointment or promotion. ~~The entrance probationary period is not interrupted by a voluntary demotion within a department.~~ (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

152. ~~UNSATISFACTORY SERVICE SEPARATION DURING PROBATION.~~

01. Notification. ~~Should~~ If a probationary employee ~~fail to serve satisfactorily~~ does not meet expectations, the appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division of Human Resources a performance evaluation indicating unsatisfactory performance. (Ref. Section 67-5309(j), Idaho Code and Rule 210.04) (7-1-87)(____)

02. During Entrance And Voluntary Probation. (3-30-01)

a. An employee who ~~fails to serve satisfactorily~~ does not meet expectations during the entrance or voluntary probation shall first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (3-30-01)(____)

~~**03. During Promotional Probation.** If an employee on promotional probation fails to serve satisfactorily in the position to which he or she has been promoted, the employee shall be returned to a position in the class in which he or she holds permanent status or to a classification allocated to the same pay grade for which the employee meets minimum qualifications. If the employee refuses to accept the position, it shall be considered a voluntary resignation. As with all employees, a violation of Rule 190 may result in disciplinary action up to and including dismissal.~~ (3-30-01)

153. ~~UNSATISFACTORY PERFORMANCE DURING A PROMOTION PROBATION PERIOD.~~

01. Disciplinary Action. Regardless of the probation status, when a Rule 190 violation supports demotion, suspension, or dismissal, such action may occur. (____)

02. Intra-Agency. If an employee, on promotional probation, does not meet performance expectations, he or she shall be returned to a position in the classification which he or she holds permanent status or to another classification in the same pay grade for which the employee meets minimum qualifications. If the employee refuses to accept the position, it shall be considered a voluntary resignation. (____)

03. Inter-Agency. (____)

a. The employee may voluntarily demote to a vacant position in any classification he or she has held permanent status in state career service. However, the employee must meet the current minimum requirements for that classification. If more than one (1) option exists for demotion, the employee should be placed in the higher paid position, but the specific assignment is up to the appointing authority. (____)

b. If no position is available for the voluntary demotion option, the employee may be laid off and may: (____)

i. Request their name be placed on a register with reemployment preference rights for the next available vacancy in the classification they would have demoted to in his/her new agency; and/or (____)

ii. Request their name be placed on a register with reemployment preference rights for the classification in the agency where they last held permanent status. (____)

1534. FAILURE TO PROVIDE PERFORMANCE EVALUATION.

If the appointing authority fails to provide a performance evaluation as required in Rules 151 ~~and 152~~, the employee

shall be considered to have satisfactorily completed the probationary period and shall be certified to permanent status as provided by Rule 151, unless the probationary period has been extended by the administrator. (Ref. Rule 150.03) (7-1-87)(____)

~~154. PROVISIONAL AND ACTING APPOINTMENTS.~~

~~Satisfactory service in provisional and acting appointments shall be credited toward the probationary period required by Rule 150.01 if the employee is subsequently appointed or promoted to the class in which he or she is serving the provisional or acting appointment. (Ref. Rules 120.05.d. and 133.03) (4-5-85)~~

155. -- 1598. (RESERVED).

~~16059. STATUS AND TENURE.~~

01. Probationary Promotions. Employees serving a promotional probationary period shall have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. (Ref. Rules 151, 152.03, and 153) (7-1-87)(____)

02. Tenure Of Employment. All employment in the state classified service shall be without definite term except where the term may be specified by law, or under conditions of a limited-service appointment. (Ref. Rule 1270) (4-5-85)(____)

1640. -- 1698. (RESERVED).

~~17069. PROMOTIONS.~~

01. Use Of Promotional Registers. (7-1-93)

a. Preference for Promotion. Whenever practical, a vacancy in a classified position shall be filled by the promotion of an employee in the department in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (3-30-01)

b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Rule 101.03) or an open-competitive register (Rule 101.04) whenever he or she determines that such an appointment will best serve the interests of the department. (Ref. Rule 112) (4-5-85)(____)

c. Layoff Departmental Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is a departmental layoff register with reemployment preference status (Rule 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (3-30-01)(____)

02. Interdepartmental Promotions. All interdepartmental promotions shall be made using statewide promotional registers (Rule 101.03) (7-1-87)

03. Eligibility For Promotion. Promotional candidates appointees must have permanent status (ref. Rule 16059) and must meet the minimum qualifications of the promotional classification. (4-5-85)(____)

1740. -- 1798. (RESERVED).

~~18079. DEMOTIONS.~~

Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. (7-1-87)(____)

~~1840. NONDISCIPLINARY DEMOTION REQUIRED.~~

An appointing authority shall make a nondisciplinary demotion when- (4-5-85)

~~01. Downward Reclassification.~~ The position occupied by an employee is reclassified to a

classification allocated to a lower pay grade in accordance with assigned responsibilities pursuant to Rule 067.

(4-5-85)()

~~02. **Voluntary Demotion In Lieu Of Layoff.** An employee with permanent status elects demotion in lieu of layoff as provided by Rule 143.~~ (4-5-85)

1821. NONDISCIPLINARY DEMOTION OPTIONAL.

An appointing authority may make a ~~nondisciplinary~~ voluntary demotion when- (4-5-85)

~~01. **Voluntary.** Requested by an employee and approved by the appointing authority.~~ (4-5-85)()

~~02. **Displaced In Layoff.** An employee is displaced by another employee entitled to the position pursuant to this Rule Section.~~ (7-1-87)

1832. DISCIPLINARY DEMOTION.

An appointing authority may make a disciplinary demotion for causes enumerated in Rule 190 which are not sufficiently severe to warrant dismissal. (7-1-87)

~~**184. NOTIFICATION.**~~

~~Except for Rule 182.01, an appointing authority shall give written notice of demotion concurrently to the employee and the administrator at least fifteen (15) calendar days prior to the effective date and shall set forth the specific reasons for the demotion.~~ (4-5-85)

1854. -- 189. (RESERVED).

190. DISCIPLINARY ACTIONS.

01. Cause For Disciplinary Actions Or Separation From State Service. ~~Disciplinary actions, including d~~Dismissal, suspension, demotion, or reduction in pay, may ~~be taken against any employee in the state classified service~~ occur for any of the following causes ~~which occur~~ during the employee's employment: (7-1-93)()

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the department or the Division of Human Resources and Idaho Personnel Commission. (7-1-87)()

b. Inefficiency, incompetency, or negligence in performing duties. (4-5-85)

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. (Ref. Rule 010.4756) (3-30-01)()

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. (4-5-85)

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department. (4-5-85)

f. Intoxication on duty. (4-5-85)

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. (4-5-85)

h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. (4-5-85)

i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. (4-5-85)

- j.** Acceptance of gifts in exchange for influence or favors given in an official capacity. (4-5-85)
- k.** Habitual pattern of failure to report for duty at the assigned time and place. (4-5-85)
- l.** Habitual improper use of sick leave. (4-5-85)
- m.** Unauthorized disclosure of confidential information from official records. (4-5-85)
- n.** Absence without leave. (4-5-85)
- o.** Misstatement or deception in application for employment. (4-5-85)
- p.** Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. (4-5-85)
- q.** Prohibited participation in political activities. (Ref. Section 67-5311, Idaho Code) (4-5-85)

02. Suspension For Investigation. An appointing authority may suspend with pay an employee for investigation of disciplinary causes enumerated above. Each suspension for investigation shall be superseded by reinstatement to duty, dismissal or disciplinary suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. (3-30-01)

03. Disciplinary Suspension. An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status shall be subject to appeal by the employee to the *Personnel* Commission. (~~4-5-85~~)()

04. Suspension On Felony Charges. An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled shall be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. (7-1-87)

05. Notice To Administrator. Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he or she shall notify the employee and the administrator concurrently in writing; and shall set forth the specific rule(s) violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule 190.02) may be made without prior notice to the employee; in this case, the appointing authority shall notify the administrator as soon as practical. (7-1-87)

191. -- 199. (RESERVED).

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview Of Procedures. (3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Idaho Code Section 67-5315(2), dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the department. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions are appealable in accordance with Rule 201. (3-30-01)

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions are not appealable to the *Personnel* Commission except as authorized by Section 67-5316, Idaho Code. (~~3-30-01~~)()

02. Establishment Of Departmental Problem-Solving And Due Process Procedures. Each

participating department shall maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and this Section. (7-1-98)

03. Eligibility And Time For Filing Under Problem-Solving Procedure. Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee shall file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the department is strongly encouraged to waive any time limits. (Ref. Rule 200.053). The time limit for filing shall be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The department may accept a filing that is or appears to be filed late. Department policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. (~~3-30-01~~)(_____)

04. Elements Of The Problem-Solving Procedure. The procedure shall contain a statement from the department head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement shall also provide a means whereby department representatives can obtain timely authority, if needed, to resolve the matter. The procedure shall require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure shall provide for such additional levels of management as are appropriate in the department. The procedure shall also provide for the use of an impartial mediator upon agreement by the employee and department. Timelines shall not exceed five (5) working days between each step. The procedure shall also inform the employee that he or she is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative shall be expressly prohibited. This procedure shall not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1), Idaho Code; Rules 150 ~~through~~ and 1543). (~~3-30-01~~)(_____)

05. Filings Alleging Sexual Harassment Or Other Illegal Discrimination. Each department's problem-solving procedure shall provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure shall expressly prohibit sexual harassment and discrimination. Employees shall be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure shall designate a specific person or persons to receive and investigate such filings, and shall require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (7-1-98)

06. Elements Of Due Process Procedure. A department must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, a department must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice shall be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond shall not occur later than ten (10) working days after the employee has received notice, unless both the employee and department agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, shall make and implement the department's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and department agree otherwise in writing. The procedure shall inform the employee of his or her right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure shall also provide for the use of an impartial mediator upon agreement by the employee and department. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code; Rule 150 through Rule 1543). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision shall also be sent to the administrator concurrently. (~~3-30-01~~)(_____)

07. Notification. A copy of the approved problem-solving and due process procedures shall be furnished and explained to each employee with permanent, provisional or entrance probationary status in the department concerned. (7-1-98)

08. Assistance To Departments. The administrator shall assist departments whenever requested in the development or revision of their departmental problem-solving and due process procedures. (7-1-98)

201. APPEAL PROCEDURE.

01. Idaho Rules Of Administrative Procedure. In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, ~~151-05 202~~, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Rules 270 and 271 of these rules. (~~3-30-01~~)()

02. Filing Of Appeal And Appearances. Every appeal filed with the Commission shall be written. The appeal shall be filed at the Division of Human Resources which serves as the office of the Commission, and shall state the decision that is being appealed and the action requested of the Commission. The ~~administrator~~ Commission shall serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by Deputy Attorneys General or members of law firms already representing a party in an appeal or petition for review. (~~7-1-87~~)()

03. Time For Appeal. An appeal from a decision of an appointing authority shall be deemed to be timely filed if received ~~or postmarked~~ at the office of the Commission within thirty-five (35) calendar days after completion of the departmental due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision shall constitute completion of the departmental due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. (~~3-30-01~~)()

04. Non-Jurisdictional Appeals. Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the Chair of the Commission, or his or her designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to Rule 202.01. If the Chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ()

045. Setting Of Hearing. Within ~~thirty~~ fifteen (30/15) days after receiving the appeal from the Commission, the hearing officer shall consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. (~~7-1-87~~)()

056. Filing Of Documents. Once an appeal is referred to the hearing officer, all documents relating thereto shall be filed directly with the hearing officer during the pendency of the appeal. Copies of all documents submitted shall be provided simultaneously to opposing counsel and unrepresented parties. (7-1-87)

067. Burden Of Proof. In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. (7-1-87)

078. Open Hearing. Every hearing shall be public, unless the hearing officer closes the hearing for good cause. Individual parties may ~~be~~ represented by themselves (pro se) or be represented by an attorney. (~~7-1-87~~)()

089. Protective Orders. The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. (7-1-93)

~~0910.~~ **Decision Of Hearing Officer.** The hearing officer shall issue a decision in the form of a preliminary order ~~pursuant to Section 67-5245, Idaho Code.~~ The preliminary order shall explain the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings shall be filed at the office of the Commission. A copy of the hearing officer's decision shall be promptly sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. (7-1-94)(____)

~~101.~~ **Procedure For Award Of Attorney Fees And Costs.** ~~If the hearing officer finds in favor of the employee in whole or in part, the hearing officer shall make a finding as to whether or not the state agency acted without a reasonable basis in fact or law. As part of his preliminary order, the hearing officer shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the employee hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, counsel for the employee the prevailing party shall file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum shall be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs shall be awarded. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer shall conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing shall be required. The state agency shall then have ten (10) working days to file objections.~~ The hearing officer shall determine the amount of the award and shall make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer shall issue his/her decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. A copy of the memorandum of costs shall be served on the parties and filed with the Commission. (7-1-94)(____)

~~12.~~ **Factors Considered In Award Of Attorney Fees And Costs.** The following factors shall be considered in the determination of an award of attorney fees and costs: (12-10-90)

- a. The time and labor required; (12-10-90)
- b. The experience and ability of the attorney; (12-10-90)
- c. The prevailing charges for like work; (12-10-90)
- d. The amount involved and the results obtained; (12-10-90)
- e. Awards in similar cases; and (12-10-90)
- f. Any other factor that appears pertinent to the award. (12-10-90)

202. PETITION FOR REVIEW PROCEDURE.

01. Filing Of Petition For Review. A petition for review shall be ~~deemed to be timely~~ filed ~~if received or postmarked~~ at the office of the Commission within thirty-five (35) days of the hearing officer's decision issued pursuant to Rule 201.10. The petition shall be in writing and ~~filed at the office of the Commission. The petition for review~~ shall specifically cite the alleged errors of fact or law made by the hearing officer. (7-1-87)(____)

02. Stay Of Hearing Officer's Decision. Upon the filing of the petition for review, the jurisdiction of the hearing officer in the matter is ended except for resolving post-hearing motions and awarding attorney fees and costs. The hearing officer's decision and any orders entered pursuant to Rules 201.0910 and 201.101 shall be automatically stayed. (12-10-90)(____)

03. Nature Of Hearing. The hearing of the Commission on a petition for review shall be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders. Written arguments or briefs and motions regarding the petition for review shall be allowed under such terms as the Commission may direct in its notice of hearing, which shall be issued at least twenty-

eight (28) days prior to the date set for hearing. (12-10-90)

04. Transcript. If the petition for review involves questions of fact, the appellant shall provide a full transcript of the proceedings before the hearing officer for the Commission to review. The respondent shall pay for an additional copy of the transcript for respondent's own use. (7-1-87)

05. Requests For Postponement And Other Motions. (7-1-93)

a. Except in emergencies, a request for postponement shall be filed in writing by a party or representative not later than seven (7) days before the scheduled hearing. The ~~administrator~~ Chair of the Commission, or his or her designee, may determine whether good cause is shown for the postponement and grant or deny the request on behalf of the Commission. (7-1-87)(____)

b. Motions to dismiss for lack of jurisdiction shall be decided by the Commission. ~~Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted.~~ All other motions shall be considered by the Chair of the Commission or at the Chair's discretion may be referred by the administrator to one (1) Commissioner, whose decision on the motion may be communicated to the parties by letter or other informal means, by the ~~administrator~~ Chair or by counsel to the Commission. (7-1-94)(____)

06. Decision On Petition For Review. The decision of the Commission shall include a statement of appeal rights under Section 67-5318, Idaho Code. Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted. The Commission shall file the original copy of its decision with the record of the proceedings and mail copies to the parties ~~immediately~~ promptly. (7-1-93)(____)

07. Record Of The Proceedings. A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. (7-1-87)

08. Attorney Fees And Costs In A Petition For Review. In its decision on petition for review, the Commission shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the Commission finds the prevailing party, if any, is entitled to attorney fees and costs, the prevailing party shall file a request for attorney fees and costs, with accompanying memorandum and affidavit in support of the request described in Rule 201.101, shall be filed with the Commission not later than ten (10) working days after receipt of the Commission's decision. The state agency shall then have ten (10) working days to file objections to the award. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the request for attorney fees and costs. The Commission shall make findings as to the entitlement to attorney fees and costs, and determine the amount of the award, if any, in its decision on the petition for review, taking into account the factors defined in Rule 201.12. (7-1-94)(____)

09. Protective Orders. The Commission may issue protective orders limiting access to information in the record. (7-1-93)

203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.
The Division of Human Resources shall take prompt action to investigate complaints received from federal agencies alleging violation of federal and/or state employment laws. The appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. (____)

01- Referral. ~~Upon the referral of a complaint based on alleged discrimination by a department or employee from the appropriate federal agency to the department, a departmental procedure established for this purpose and an appeal to the hearing officer of the Idaho Personnel Commission shall constitute the "applicable internal review procedure" referred to in the applicable federal regulations. Except as modified herein, the procedures, remedies, and process under Rule 200 remain intact.~~ (3-30-01)

02- Departmental Procedure. ~~The director of the department, immediately upon receipt of the complaint, shall notify the complainant of his or her right to use the procedure set forth herein to resolve the~~

~~complaint. A panel or designated person shall take testimony or written evidence regarding the complaint as is necessary to fully discuss the circumstances surrounding the alleged act of discrimination. A written report in sufficient detail to allow subsequent reviewers to understand the allegations shall be compiled from the testimony and evidence adduced at the hearing. The person or panel may make such recommendations to the director of the department as it sees fit. The department director shall receive and consider the report and issue a decision based upon it. If the resolution is satisfactory to all parties, the federal agency will be notified the complaint has been resolved and forward a copy of the decision and acquiescence of the parties to it.~~ (7-1-87)

03. ~~Petition To Hearing Officer.~~ (7-1-93)

~~a. If the decision of the director is unacceptable to the complainant, he or she may petition for review by the hearing officer of the Idaho Personnel Commission. The petition shall state the grounds for disagreement with the director's decision and be accompanied by a copy of the report and director's decision.~~ (8-1-81)

~~b. Oral argument on behalf of the respective parties may be offered if it is requested. The decision of the hearing officer shall be the final administrative review under the "applicable internal review procedure". If the resolution is satisfactory to all parties, the appropriate federal agency shall be notified. If the resolution is unsatisfactory, the complaint shall be referred back to the originating federal agency for resolution.~~ (6-30-78)

~~04. **Time.** In no event shall this process take more than sixty (60) days, except upon agreement between the parties and appropriate federal agency.~~ (6-30-78)

204. -- 209. (RESERVED).

210. PERFORMANCE EVALUATIONS.

01. Performance Evaluations. Each department shall adopt and maintain a system of employee performance evaluations provided it meets the basic objectives of the state's performance evaluation system as approved by the administrator. (3-30-01)

02. Approval Of Form. The Division of Human Resources' staff shall make available a standard format for this purpose, ~~but a~~ An appointing authority may utilize another form provided it meets the basic objectives of this rule performance criteria and ratings and is approved by the administrator. (4-5-85)(____)

03. Purpose. The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established ~~work standards~~ expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All ~~ratings~~ appraisals shall be discussed with affected employee who shall be allowed opportunity to submit written comments regarding the ~~rating~~ evaluation contents. (4-5-85)(____)

04. Use Of Evaluations. Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases and bonuses (Ref. Section 67-5309C(b), Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule 151). Other uses of performance evaluations are optional with the appointing authority. (3-30-01)

05. Evaluation Schedule. All classified employees shall be evaluated after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each two thousand eighty (2,080) hours of credited state service thereafter. (Ref. Section 67-5309C(b)(ii), Idaho Code.) Part time employees shall be evaluated on an annual basis. (3-30-01)

06. Retention Of Evaluation. A copy of the performance evaluation shall be retained in departmental records, and a copy shall be furnished the employee. ~~A copy~~ The performance rating shall be provided transmitted to the administrator, with or without Agency records and supporting documentation are subject to review by the Division of Human Resources. All performance evaluation documents should be copied and forwarded with the employee when an interagency promotion, demotion or transfer occurs. (7-1-94)(____)

07. Supervisors' Requirements. Supervisors are required to manage performance on a consistent basis including required performance evaluations on all employees under their direct supervision. ()

211. -- 219. (RESERVED).

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources' staff shall maintain a service record which shall include ~~a copy of~~ all personnel transactions pertinent to the employee's employment history. (~~4-5-85~~)()

b. Service records or a facsimile thereof for classified employees shall be maintained permanently by the administrator. (3-30-01)

c. Any employee may at all reasonable times during business hours review his or her service record maintained in the Division of Human Resources or maintained in any department. Except for material used to screen and test for employment, all information maintained in an employee's service record shall be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (3-30-01)

02. Administrative Records. The administrator shall permanently maintain a record ~~or a microfilm facsimile~~ of the proceedings of the *Personnel* Commission and a record of all hearings of appeals. (~~3-30-01~~)()

03. Employee Personnel Action Documents. The appointing authority shall furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (3-30-01)

04. Transfers, Reemployment And Promotions Between Departments. When an employee seeks a transfer, reemployment, or promotion between departments or agencies, the appointing authority of the hiring department or agency, or designee, shall be entitled to examine the employee's service record and current agencies performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

240. SICK LEAVE.

01. Eligibility. Sick leave shall be earned in accordance with Section 67-5333, Idaho Code. Sick leave shall only be taken in pay periods subsequent to being earned. (3-30-01)

02. Interdepartmental Transfer. An employee who is transferred from one (1) state department to another shall be credited by the receiving department with the amount of sick leave accrued at the time of transfer. (3-30-01)

03. Reasons For Use. Sick leave shall only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (~~7-1-96~~)()

04. Medical, Dental, Or Optical Appointments Leave (MDA). Employees are allowed up to two (2) hours for each occasional appointment without charge to sick leave for personal or family-member medical, dental or

optical examination or treatment. Occasional appointments are those which are traditionally considered to be preventative, wellness related, or diagnostic. Ongoing treatment for physical or mental illness is not covered by MDA. Use of this benefit may be limited by the appointing authority on a case by case basis where frequency of use is impeding organizational effectiveness or misuse is suspected. If more than two (2) hours are needed for appointments additional time may be charged to sick leave. (3-30-01)(____)

05. Serious Medical Conditions. Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule 242) (3-30-01)

06. Notification. It is the responsibility of the employee to notify his or her supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. (4-5-85)

07. Donated Leave. Vacation leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5335(7), Idaho Code. Such transfers are to be made from employee to employee. Vacation leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. (____)

08. Sick Leave Abuse. A predictable and reliable level of attendance is an essential function of almost all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. (Rule 190.01.k. and 190.01.l). When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Section 67-5333, Idaho Code) (____)

241. WORKERS COMPENSATION AND DISABILITY.

01. Use Of Leave In A Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee shall be given the choice of either: 1) leave of absence without pay while receiving workers compensation; or 2) utilizing a portion of accrued sick leave to supplement workers compensation to maintain his or her regular salary. No appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his or her rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (4-5-85)

02. Layoff After Six Months' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to return to work after six (6) months' absence or when accrued sick leave has been exhausted, whichever is longer, the employee's position shall be declared vacant unless precluded by federal law. (Ref. Rule 101.01) The period of absence is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks. Return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence. (3-30-01)(____)

a. The disabled employee's name ~~retention points need not be calculated unless there are other employees on the~~ shall be placed on the departmental layoff ~~register in the same class~~ list. The employee shall be entitled to reemployment preference pursuant to Rules 145 and 146 and reinstatement privileges provided under Rule 1254 when released by his or her physician to return to work. (12-10-90)(____)

b. The disabled employee's name shall be certified to a ~~layoff~~ register with reemployment preference when the administrator has been notified by the physician that the employee is able to return to work. Conditional releases will be considered in accordance with the Americans with Disabilities Act. (3-30-01)(____)

242. FAMILY AND MEDICAL LEAVE.

01. Applicability. The provisions of the federal Family and Medical Leave Act (FMLA) shall apply

without regard to the exclusion for worksites employing less than fifty (50) employees in a seventy-five (75) mile area, and without the limitation on reinstatement of the highest-paid employees. (Ref. 29 U.S.C. 2601 et seq.). The State is one (1) employer for the purposes of FMLA. For consistency, the administrator shall publish statewide guidance on FMLA policies. (7-1-94)(____)

02. Return To Work Release. An appointing authority may request a return to work release if, due to the nature of the health condition and the job: (3-30-01)

a. Light or limited duty work or other accommodation is requested; or (7-1-94)(____)

b. The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others. (7-1-94)

243. MATERNITY AND PATERNITY LEAVE.

01. Use Of Sick Leave. Disabilities caused or contributed to by pregnancy, child birth or related medical conditions are considered temporary disabilities and shall be treated as such for sick leave purposes. Maternity and paternity leave shall be granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act. (3-30-01)(____)

02. Determination Of Disability Period. The employee's physician shall be considered the ~~sole~~ primary authority in determining the disability period insofar as compensable sick leave is concerned. (4-5-85)(____)

03. Additional Time Off. Maternity and paternity leave preceding and following the time that the ~~employee~~ person is disabled shall be leave without pay unless the employee elects to use accrued vacation leave, earned administrative leave or compensatory time off for overtime. (3-30-01)(____)

04. Discrimination Prohibited. Pregnancy discrimination is prohibited. The employee may continue to work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-30-01)

05. Adoption and Foster Care. Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule 242) (3-30-01)

244. SEPARATION UPON FAILURE TO RETURN TO WORK.

Except for those employees on authorized leave or placed on a layoff register list as prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) days after approved paid or unpaid leave or release by his or her physician shall be considered as having ~~resigned~~ abandoned his or her job. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement as provided under Rule 1254. Written notification of his or her resignation shall be mailed to the last known home address. Any objections by the employee to this resignation requires the agency to pursue dismissal under Rule 190. (3-30-01)(____)

245. -- 249. (RESERVED).

250. SPECIAL LEAVES.

01. Leave Of Absence Without Pay. (7-1-93)

a. Approval. ~~An employee may, at the discretion of~~ In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority, ~~be may granted an employee~~ leave without pay for a specified length of time when such leave would not have an adverse effect upon the department. The request for leave must be in writing and must establish reasonable justification for approval. (4-5-85)(____)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, earned administrative leave or compensatory time off for overtime before commencing leave is the appointing authority's option without pay. (Ref. Rule 240) (7-1-87)(____)

d. Resignation. If vacation leave, earned administrative leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he or she shall be paid for such accruals in accordance with Sections 67-5337 and 67-5329(3), Idaho Code. (7-1-87)

02. Leave Of Absence To Assume A Nonclassified Position. (7-1-93)

a. Approval. An appointing authority may approve a leave of absence without pay may be granted from classified service to a classified employee to assume a nonclassified position in state service. Such leave of absence shall not extend beyond the time the employee would be eligible for reinstatement to classified service and ninety (90) days past the service of the appointing authority. (Ref. Rule 1254.01.a.) (7-1-87)(____)

b. Credited State Service. An employee ~~returning from a~~ on leave of absence granted to assume a nonclassified position ~~shall be allowed classified~~ continues to accrue credited state service ~~for the leave in the class from which he or she was granted the leave of absence. Credit shall not exceed time limits established above. (4-5-85)(____)~~

03. Leave Defaults. When an employee does not have accrued sick ~~or vacation~~ leave to cover an entire absence ~~that is attributed to sick or vacation leave, respectively~~, the following leave types shall be used to the extent necessary to avoid leave without pay: accrued compensatory time; earned administrative leave; vacation. If abuse of sick leave is suspected see Rule 240.08. (7-1-87)(____)

04. Military Leave With Pay. Employees who are members of the national guard or reservists in the armed forces of the United States who are directed by proper military authority to participate in ordered and authorized field training under the National Defense Act shall receive military leave with pay for a maximum fifteen (15) working days in any one (1) calendar year. Such leave is exclusive of vacation and sick leave and compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (4-5-85)

05. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his or her position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule 1254.05. The employee shall either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (3-30-01)(____)

06. Administrative Leave With Pay. At the discretion of the appointing authority, an employee may be granted administrative leave with pay when such leave is in the best interest of the department. (4-5-85)

07. Earned Administrative Leave. (7-1-93)

a. Authority for Use. In any week that an employee would be compensated an amount greater than forty (40) hours times the employee's regular rate of pay, an appointing authority may allow the employee to accumulate earned administrative leave to the extent necessary to reduce the cash compensation to forty (40) hours. An appointing authority may allow a part-time employee to accumulate earned administrative leave for the hours worked between the regularly-scheduled hours and forty (40) hours. Earned administrative leave shall be calculated based on one hundred sixty (160) hours for police, correctional officers, and fire employees pursuant to Rule 073.02. (3-30-01)

b. Ineligible Employees. Employees who are ineligible for cash compensation and compensatory time for overtime work are ineligible for earned administrative leave. (Ref. Section 67-5329(1), Idaho Code). (12-10-90)

c. Payment and Credited State Service. Earned administrative leave (EAL) balances shall be paid upon transfer or separation. Hours of EAL shall accrue credited state service when worked. (3-30-01)

08. Court And Jury Services And Problem-Solving And Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he or she shall not be considered absent from duty. The employee shall not be entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee shall be reimbursed by his or her respective department in accordance with ~~state department~~ travel regulations. ~~(12-10-90)(_____)~~

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee shall be permitted to attend. The employee may use accrued leave or leave without pay. (3-30-01)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he or she shall be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee shall be entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (7-1-87)

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by a departmental problem-solving or due process procedure or to appear as a witness or representative during such a proceeding shall be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (7-1-98)

e. Notification. An employee summoned for court and jury service or requested to serve as a grievance panelist, witness, or representative shall notify his or her supervisor as soon as possible to obtain authorization for leave of absence. (7-1-87)

09. Election Leave. When requested by an employee, an appointing authority shall grant leave with pay, without charge to vacation leave or compensatory time off for overtime, for voting in primary, general, municipal, school, or special elections in those instances where the employee's work would interfere with his or her being able to vote. (4-5-85)

10. Religious Leave. Appointing authorities shall make reasonable accommodations to an employee's need for leave for religious observances. Such leave shall be charged to the employee's accrued vacation leave or compensatory time off for overtime. (4-5-85)

11. Leave During Facility Closure Or Inaccessibility. (7-1-93)

a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees shall be authorized administrative leave with pay (Ref. Rule 250.06) to cover their scheduled hours of work during the closure or inaccessibility. (4-5-85)

b. Compensation for extra hours worked. An employee who works at a state facility during declared closure or inaccessibility shall be, in addition to regular salary, granted time off equal to the number of hours worked. If overtime is involved, it shall be compensated as provided by Section 67-5329, Idaho Code. (4-5-85)

c. Early release. When ~~a severe storm occurs during the day, and~~ the appointing authority or designated representative authorizes early release of employees pursuant to Rule 250.11.a., the resulting time off shall be charged to administrative leave with pay. (Ref. Rule 250.06) ~~(4-5-85)(_____)~~

12. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers shall be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (3-30-01)

13. Employee Assistance Program Leave. Up to two (2) hours per visit shall be granted for utilization of the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program. EAP leave shall be coded as MDA. (Ref. Rule 240.04). (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

272. POLICY MAKING AUTHORITY.

To address the need for all classified employees to be treated equally, and in situations where the State may be considered as one (1) employer, the Division of Human Resources Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. ()

273. MINIMUM HUMAN RESOURCE POLICIES.

In order to ensure consistent minimum standards for employee rights and responsibilities under federal law, Idaho Code, and executive orders, each agency is required to have policies on the following, and take steps needed to inform employees of their rights and responsibilities under those same policies. If an appointing authority does not provide employees with the agency specific policy, a model policy issued by Division of Human Resources will apply. ()

01. Problem Solving. (Ref. Rule 200) ()

02. Due Process. (Ref. Rule 200.01.a.) ()

03. Compensation. (Ref. Rule 073.06) ()

04. Reasonable Accommodations/ADA. (Ref. Rule 021) ()

05. Sexual Harassment And Other Illegal Discrimination. (Ref. Rule 021) ()

06. Conflict Of Interest - Nepotism. (Ref. Rule 024 and 025) ()

07. Drugfree Workplace. (Ref. Rule 190.01.f.) ()

274. -- 999. (RESERVED).

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DISPENSARY**

15.10.01 - RULES OF THE IDAHO STATE LIQUOR DISPENSARY

DOCKET NO. 15-1001-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 23-203, 23-206, and 23-208 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 15, 2003.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rule change clarifies the right of Dispensary personnel to remove underage and intemperate persons from the store premises. This change responds to a growing need in the retail liquor stores operated by the Dispensary (referred to as State Stores) to clarify the right of Dispensary personnel to remove underage and intemperate persons from the store premises. This rule is intended to allow the exercise of discretion by Dispensary personnel to discourage entry and loitering by underage or intemperate persons where their presence is disruptive or is inconsistent with the Dispensary's charge to curtail intemperate use of alcoholic beverages.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01-811, negotiated rulemaking was not conducted because the rulemaking is noncontroversial.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact J. M. "Dyke" Nally, Superintendent at (208) 334-2524.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

J. M. "Dyke" Nally
Superintendent
Idaho State Liquor Dispensary
1349 Beechcraft Crt.
P. O. Box 179001
Boise, Idaho 83717-9001
Telephone: (208) 334-2524
Facsimile: (208) 334-2533

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-1001-0301

010. RETAIL STORES.

01. Site Location. Based on the criteria set forth in this section and in accordance with Sections 23-301 and 23-302, Idaho Code, the Dispensary will select an appropriate retail store site to adequately serve the community. (3-20-97)

a. State stores will generally be established in larger cities of the state where sales volume cost justifies adequate profitable operation. (3-20-97)

b. Special distributors will generally be contracted in the smaller cities of the state. However, special distributors who meet or exceed Dispensary operating expectations, and whose sales volume has grown to exceed minimum state store sale thresholds, will not be denied a special distributor agreement because of their larger size of operation. (Sections 23-301 and 23-302, Idaho Code). (3-20-97)

02. Site Selection Criteria. The following criteria will be used in selecting a location for a new retail store. (3-20-97)

a. Public acceptability of location in accordance with Sections 23-301 and 23-302, Idaho Code. (3-20-97)

b. Location and suitability of premises. (3-20-97)

c. Lease amount may not be the sole determining factor in site selection; final selection will be determined at the discretion of the Superintendent. (3-20-97)

d. Compliance with local zoning. (3-20-97)

03. Customer Refunds And Exchanges. No cash refunds will be authorized without prior approval of the Superintendent or his authorized agent. (3-20-97)

a. Liquor may be exchanged for other liquor of the same or higher price upon approval of the store manager and presentation of a valid receipt. (3-20-97)

b. Liquor brought in for exchange or refund must have been purchased in Idaho through the Dispensary and must have the official Idaho seal as prescribed by the Dispensary. (3-20-97)

c. A re-shelving charge may be assessed on all returned items in accordance with Section 23-311, Idaho Code. (3-20-97)

04. Disabled Customers. Appropriate special services, in accordance with the Americans with Disabilities Act, will be provided to disabled customers. (3-20-97)

05. Special Orders. Customers seeking liquor not carried in the Dispensary's product line may place a special order for such liquor. (3-20-97)

a. The order must be picked up in total within one (1) week's time after notification by the store manager. Orders not picked up within one (1) week following such notification are subject to forfeiture of deposit and the liquor may be placed on the shelf for sale. (3-20-97)

b. Order cancellations will be honored if done within seven (7) calendar days from the date the order was placed and, if the cancellation is accepted by the vendor. (3-20-97)

c. A deposit or a percentage of the order price, as specified by the Superintendent, may be required before a special order is placed. (3-20-97)

d. If the liquor is not available within ninety (90) days, a customer may request a deposit refund if the

cancellation is accepted by the vendor. (3-20-97)

06. Prices. All prices will be in accordance with the published price list set by the Superintendent in accordance with Section 23-207(h), Idaho Code. (3-20-97)

07. Distressed Liquor. Price adjustments can be made on distressed liquor with the approval of the Superintendent or his authorized agent. (3-20-97)

08. Hours And Days Of Operation. Standard store hours shall be from 11 a.m. to 7 p.m. Monday through Saturday and shall be in accordance with Section 23-307, Idaho Code. Special hours of operation may be adjusted as approved by the Superintendent or his authorized agent. (3-20-97)

09. Customer Response Cards. Each store will have customer response cards for customers to use when filing comments or complaints. These cards will be pre-addressed to the Dispensary. The Superintendent or his authorized agent shall investigate all comments and promptly respond to the customer. (3-20-97)

10. Audits. Designated Dispensary personnel shall perform periodic inspections of all retail stores. Such inspections may be on an unannounced basis and may include physical inventory counts with the assistance of the store manager or authorized agent to assess the suitability of inventory levels and product mix and other evaluation procedures. (3-20-97)

11. Admission To State Store. To protect the assets of a State Store, to enhance the safety of Dispensary personnel and the public, and to aide in the performance of the Dispensary's duties, State Store personnel may refuse a person entry into a State Store, may require a person to leave a State Store, or may take other actions as are appropriate to cause the removal of a person from a State Store where such person's presence in the State Store is disrupting performance of the Dispensary's duties or is inconsistent with the Dispensary's charge to curtail the intemperate use of alcoholic beverages. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0302

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-1004(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 15, 2003.

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 rulemaking:

Section 214 is being amended to clarify the Social Security Number (SSN) requirements to align with the federal requirements that the SSN must be verified before an applicant is eligible for Medicaid benefits. Sections 346 through 349 are being amended to clarify how income is calculated and to ensure the income methodology is applied equitably throughout the state.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made due to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Tiffany Kinzler at (208) 334-6540.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 22, 2003.

DATED this 6th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-0302

214. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

~~An *participant* applicant must provide ~~a~~ his Social Security Number (SSN), or proof he has applied for an *Social Security Number* SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. *This SSN requirement only applies to persons applying for or receiving Medicaid. A person not applying for or receiving Medicaid does not have to provide an SSN. When an SSN is unverified, the applicant is not eligible for Medicaid benefits. The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement.* (3-30-01)(7-1-03)T~~

01. Application For SSN. The applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (7-1-03)T

02. Failure To Apply For SSN. The applicant may be granted good cause for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (7-1-03)T

- a.** Is a member of a recognized religious sect or division of the sect; and (7-1-03)T
- b.** Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (7-1-03)T

03. SSN Requirement Waived. An applicant may have the SSN requirement waived when he is: (7-1-03)T

- a.** Only eligible for emergency medical services as described Section 602 of these rules; or (7-1-03)T
- b.** A waived newborn child as described in Section 601 of these rules. (7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

346. ~~DETERMINING INCOME ELIGIBILITY FOR THE MONTH OF APPLICATION INCOME AVAILABLE TO THE APPLICANT.~~

~~Calculate the household's countable income for the application month, and compare the income against the income limits for the appropriate Medicaid program. Use actual income for each of the three (3) retroactive months to determine eligibility for that month. Determine eligibility for each retroactive month separately. Income to the applicant and financially responsible household members must be counted to determine Medicaid eligibility. The income must be under the control of the applicant or financially responsible person during the month(s) for which Medicaid eligibility is being determined. When income is available, the amount will be used to determine eligibility even if the individual chooses not to obtain or use it. The applicant or financially responsible person must take all steps necessary to obtain benefits for which they may be eligible before Medicaid may be approved, including Title II Social Security income (RSDI), unemployment insurance, and worker's compensation. (3-30-01)(4-1-03)T~~

347. ~~ANTICIPATING INCOME ELIGIBILITY.~~

~~Anticipate income to determine continuing eligibility. Compare the household's countable anticipated income against the income limits for the appropriate Medicaid program. The applicant's countable income must be calculated according to Section 301 of these rules. Actual income already received and income that can reasonably be expected or anticipated is included when calculating income. (3-30-01)(4-1-03)T~~

01. Income For Children. Income for children applying for a twelve (12) month continuous eligibility period must be calculated as an annual amount. To be eligible the applicant's countable income must be equal to or less than the annual income limit for the appropriate Medicaid program. (4-1-03)T

02. Income For Other Applicants. Income must be calculated as a monthly amount for all other applicants. To be eligible the applicant parents, caretaker relatives, pregnant women and ineligible non-citizens countable income must be equal to or less than the monthly income limit for the appropriate Medicaid program. (4-1-03)T

03. Income For Retroactive Medicaid. Eligibility for retroactive Medicaid is determined by using actual income amounts for each of the three (3) retroactive months. Eligibility for each retroactive month is determined separately. (4-1-03)T

348. ~~DETERMINING INCOME AVAILABLE TO THE HOUSEHOLD~~ ACTUAL AND ANTICIPATED INCOME.

Income from financially responsible household members is counted for Medicaid eligibility. Income is available when the participant has a legal interest in a liquidated sum. Income must be under the control of the participant during the period for which need is being determined. Income is available when action can be taken by the individual to obtain or use it. The participant must take all necessary steps to obtain program benefits for which he may be eligible. This includes RSDI, unemployment insurance, and worker's compensation. The Department will establish a reasonable estimate of expected monthly or annual income based on income information from the applicant and other third party sources. To determine the monthly or annual income, actual income already received and income that can reasonably be expected or anticipated will be used. (3-30-01)(4-1-03)T

01. Expected Income. When no changes are expected, the actual income received in the past thirty (30) days will be used. The anticipated income must be used if changes are expected. (4-1-03)T

02. Seasonal Income. If income changes seasonally, the applicant's income for the last twelve (12) months including any pay changes will be used to anticipate monthly or annual income. (4-1-03)T

03. Fluctuating Income. When applicant's hours of work fluctuate each pay period and the rate of pay remains the same, the income from the past thirty (30) days will be used to determine the monthly or annual income. (4-1-03)T

04. Salaried Income. Salaried income is counted at the monthly rate, not at an hourly rate. (4-1-03)T

349. ~~CALCULATING A FULL MONTH'S INCOME USING ACTUAL AND PROJECTED INCOME~~ CONVERTING INCOME TO AN ANNUAL AMOUNT.

Calculate the monthly income, using actual income already received during the month and income expected to be received in the month. The household and the Department must agree this is a reasonable estimate of that month's income. To convert the income to an annual amount, use the appropriate formula in Subsections 349.01 through 349.03 of these rules. The annual amount is the total amount of income for twelve (12) months, beginning the month of application. (3-30-01)(4-1-03)T

01. ~~Full Month's Income Expected From An Ongoing Source.~~ *If no changes are expected, use the actual income received in the past thirty (30) days to project a full month's income. If changes are expected, project the income for the month with the new information.* **Weekly Income.** Multiply weekly income times four point three (4.3) times the number of months the income will be received during the twelve (12) months, beginning with the month of application. (3-30-01)(4-1-03)T

02. ~~Full Month's Income Not Expected From An Ongoing Source.~~ *If a full month's income is not expected from an ongoing source, count the income expected for the month. If the actual amount is known, use the actual income. If the actual income is unknown, project the expected income for that month.* **Bi-Weekly Income.** Multiply bi-weekly income times two point fifteen (2.15) times the number of months the income will be received during the twelve (12) months, beginning with the month of application. (3-30-01)(4-1-03)T

~~03. **Full Month's Income Not Expected From A New Source.** If income is from a new source, and a full month's income is not expected, count the actual income expected for the month. Do not convert the new source of income to a monthly amount. If the actual income is unknown, project the expected income for that month. **Semi-Monthly Income.** Multiply semi-monthly income times two (2) times the number of months the income will be received during the twelve (12) months, beginning with the month of application. (3-30-01)(4-1-03)T~~

~~04. **Income From Terminated Source.** If income is from a terminated source, and no additional income is expected in a future month, count the actual income received during the month. Do not convert income to a monthly amount, if a full month's income from the terminated source is not expected. (3-30-01)~~

~~05. **Seasonal Income.** If income changes seasonally, consider the household's income from the last season and any pay changes to project the month's income. (3-30-01)~~

~~06. **Fluctuating Income.** When income fluctuates each pay period, and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a full month's income. (3-30-01)~~

~~07. **Income Paid As Salary.** Count income paid as salary at the expected monthly salary rate. Do not count salary at an hourly rate. (3-30-01)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-0301
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATES: These temporary rules have effective dates of December 1, 2002; April 1, 2003; July 1, 2003; and October 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-106(1)(a), 56-202, 56-203, and 56-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 15, 2003.

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 rulemaking:

The proposed rulemaking makes clarifications to the Social Security Number (SSN) requirements; clarifications and corrections to citizenship and residency requirements; clarification to the rule regarding fugitive felons; clarifications to rule regarding dependent care expenses, earned income, excluded income, and change reporting; clarifications regarding of vendor payment and third-party payments; updates the new Federal 36-month period in the rule regarding work requirements for Able Bodied Adults Without Dependents (ABAWDs); and modifications due to Farm Bill regarding citizenship or satisfactory immigration status and sponsor deeming.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs and to confer a benefit.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rulemaking occurred to comply with changes mandated in federal regulations and Idaho statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Phil Gordon at (208) 334-5818.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 22, 2003.

DATED this 8th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0301

159. ~~SSN FOR EXPEDITED FOOD STAMPS (RESERVED).~~

~~The household must furnish or apply for a SSN for each person before the second full month of Food Stamps. Household members unable to provide SSNs before the end of the second full month of Food Stamps, and not having good cause for the SSN problem, cannot continue to get Food Stamps. A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later.~~ (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

203. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

Before certification, households must provide the Department the SSN, or proof of application for SSN, for each household member. If a household member has more than one (1) SSN, he must provide all of his SSNs. Each SSN must be verified by the Social Security Administration (SSA). A household member with an unverified SSN is not eligible for Food Stamp benefits. The ineligible person's income and resources must be counted in the Food Stamp budget. If benefits are reduced or ended, because one (1) or more persons fail to meet the SSN requirement, the household must be notified in writing. (7-1-98)(7-1-03)T

~~**01. Religious Objection.** Households declaring a valid religious objection to getting or providing an SSN may get Food Stamps, if otherwise eligible. Document the valid reason for the SSN objection. Tell the household SSNs may be assigned to household members without their cooperation. Tell the household other sources may be used to get SSN data.~~ (6-1-94)

~~**02. Application For SSN.** If a household member does not have an SSN, he must apply for an SSN. After the member files the SSN application, he may get Food Stamps while the SSN is assigned. If a household member is unable to provide his SSN, he must apply for a duplicate SSN card. If a household member does not know if he has an SSN, he must apply for an SSN. If a household member has a questionable SSN he must apply for an SSN. SSN application process and proof is listed below:~~ (7-1-97)(7-1-03)T

~~**a.** Application for SSN or duplicate SSN card. For the household member with a SS card, the Department must tell the household an SS-5 Application for SSN must be filed at an SSA office, give the household an HW 0446 Social Security Number Referral form, and tell the household proof of age, identity, and citizenship must be provided to the SSA. If a household member does not have an SSN, he must apply for an SSN. After the household member files the SSN application, he may receive Food Stamp benefits while the SSN is assigned.~~ (3-15-02)(7-1-03)T

~~**b.** Proof of SSN application. The household must prove it applied for an SSN by giving one (1) of three (3) forms to the Department: A completed HW 0446 Social Security Number Referral, signed and dated by SSA, a completed SSA-5028 Evidence of Application for Account Number Card, signed and dated by SSA, a completed SSA-2853 Message From Social Security, signed and dated by a hospital representative. The acquired SSN card is proof of application. If a household member is unable to provide his SSN, he must apply for a duplicate SSN card.~~ (6-1-94)(7-1-03)T

~~**c.** If a household member does not know if he has an SSN, he must apply for an SSN. (7-1-03)T~~

~~**d.** If a household member has a questionable SSN, he must apply for an SSN. (7-1-03)T~~

~~**e.** If the person is unable to get the proof required by SSA for an SSN, the Department will help the person get proof. (7-1-03)T~~

032. Proof Of Application For An SSN For A Newborn. A newborn may ~~participate~~ receive Food Stamp benefits when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next Food Stamp recertification or six (6) months after the month the child was born, whichever is later. If the household does not provide proof of SSN or application for SSN, ~~treat the child as a disqualified household member~~ will be ineligible to receive Food Stamp benefits the month following the month the household failed to provide the proof. ~~(7-1-98)(7-1-03)T~~

043. Expedited Services SSN Requirements For Expedited Food Stamp Service. ~~Households getting expedited services must furnish an SSN or apply for an SSN for each person before the second full month of Food Stamp participation. If the application date is the first day of the month and proof is delayed, the household is assigned a normal certification period. For a household applying on the first day of the month, if the SSN or application for SSN is not provided for a household member during the first month, the person is treated as an excluded household member beginning the second month. A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later. Households entitled to expedited service under the criteria in Section 155 of this chapter of rules will be asked to furnish an SSN or proof of application for SSN for each person in the household applying for benefits before the first day of the second full month of Food Stamp participation. Those household members unable to provide the SSN or who do not have one prior to the second full month of participation may be allowed to continue to participate only if they satisfy the good cause requirements in Subsections 203.04.a. through 203.04.c. of this rule. (7-1-98)(7-1-03)T~~

05. Refusal Or Failure To Provide SSN. ~~Refusal or failure, without good cause, to provide an SSN will end benefits of the person without an SSN. Refusal or failure, without good cause, to apply for an SSN, will end benefits of the person without an SSN. The person is not eligible until an SSN is provided or application is made. The disqualified person's income and resources must be counted in the Food Stamp budget. Explain these penalties to the household. If benefits are reduced or ended, because one (1) or more persons fail to meet the SSN requirement, send a Notice of Decision. The notice includes the name of the disqualified household member, the reason and the new household benefit. The notice tells the household the actions they must take to get Food Stamps for the disqualified member. (6-1-94)~~

064. Good Cause For Not Applying For SSN. If a household member can show good cause why an SSN application was not completed, ~~within the application month in a timely manner, the member can participate for an additional month~~ an extension must be granted to allow him to receive Food Stamp benefits for one month in addition to the month of application. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Good cause is described below: ~~(6-1-94)(7-1-03)T~~

a. Good cause exists if the ~~HW 0446 or other documents show the household submitted form SS-5 to the SSA, but the SS-5 application for SSN was not processed in a timely manner by the SSA. Once the SS-5 has been filed and accepted by the SSA, the member can be eligible until the SS-5 is processed. (6-1-94)(7-1-03)T~~

b. Good cause exists if documents or collateral data show the household applied for, or made every effort to apply for, an SSN. ~~(6-1-94)~~

c. Good cause does not include household-caused delays due to illness, lack of transportation, or temporary absences. ~~(6-1-94)~~

05. Exception For Religious Objection. The Department may assign an identification number to a person who is applying for Food Stamps, but who, because of well-established religious objections as defined under 42 CFR 435.910, refuses to obtain an SSN. The identification number may be either an SSN obtained by the Department on the applicant's behalf or another unique identifier. ~~(7-1-03)T~~

07. Person Unable To Get Proof For SSA. ~~If the person is unable to get the proof required by SSA for an SSN, the Department will help the person get proof. (6-1-94)~~

08. Good Cause Extension. ~~If the person cannot get an SSN in the application month, and good cause exists, a one (1) month extension must be granted to allow the person to get Food Stamps until the SSN is received.~~

(6-1-94)

~~09. **SSN Proof Required.** Verify all SSNs, or application for SSNs, for each household member. SSNs are proved through Numident. (6-1-94)~~

~~10. **SSN Not Proved Due To Numident Discrepancy.** If there is a Numident discrepancy take the action listed below: (6-1-94)~~

~~a. Notify household member. Notify the household member, in writing, they must submit a corrected SS-5 and supporting data to SSA within ten (10) calendar days. Notify the household member their Food Stamps will end if the Department does not have proof the SS-5 was submitted to SSA within ten (10) calendar days. (3-15-02)~~

~~b. Evaluate good cause. Determine whether there is good cause for refusal to cooperate, if a household member claims they cannot submit the SS-5 and supporting data to SSA. If the supporting data has been destroyed good cause may exist. (3-15-02)~~

~~c. End benefits. Disqualify only the persons with a Numident discrepancy, who refuse to cooperate with the SSN requirement. Close the case after advance notice, if the entire household has a Numident discrepancy and refuses to cooperate with the SSN requirement. Refusal to cooperate means failure or refusal to submit the SS-5 and required proof to SSA, without good cause. (3-15-02)~~

~~204. **CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS.**~~

~~A person must be a U. S. resident to get Food Stamps. A person must be a U.S. citizen, a U.S. non-citizen national, or a qualified legal non-citizen to get Food Stamps. To be eligible for Food Stamps, legal non-citizens must meet a category in Subsections 204.01 through 204.11 of this rule. (10-1-02)F~~

~~01. **Permanent Residents.** A non-citizen lawfully admitted to the United States for permanent residence is eligible indefinitely if meeting a condition in Subsection 204.01.a. or 204.01.b. of these rules: (10-1-02)F~~

~~a. The non-citizen is a veteran honorably discharged for a reason other than alienage, or is on active duty in the U.S. Armed Forces for other than training, or is the spouse or unmarried dependent of a veteran or person on active duty. (10-1-02)F~~

~~b. The non-citizen has forty (40) quarters of work. A quarter worked by the legal non-citizen's parent, while the legal non-citizen was under age eighteen (18) and a quarter worked by the legal non-citizen's spouse during marriage if the legal non-citizen remains married to the spouse or the spouse is deceased can be counted as a quarter of work for the legal non-citizen. Any quarter after January 1, 1997, in which a legal non-citizen received any Federal means tested benefit is not counted as a quarter of work. (3-15-02)~~

~~02. **Lawful Non-Citizen, Permanent Residents Residing In The U.S. On August 22, 1996.** Lawful non-citizen, permanent residents residing in the U. S. on August 22, 1996 who are: (4-5-00)~~

~~a. Sixty-five (65) years of age or older, at that time; or (4-5-00)~~

~~b. A child who is now under the age of eighteen (18). (4-5-00)~~

~~03. **Lawful Non-Citizen, Permanent Residents Who Are Blind Or Disabled.** Lawful non-citizen, permanent residents who are blind or disabled and meet one (1) of the disability criteria listed in Subsections 216.02 through 216.10 of these rules. (10-1-02)F~~

~~04. **Refugees.** A refugee admitted under Section 207 of the Immigration and Nationality Act, a Cuban/Haitian entrant as defined in Section 501(e) of the Refugee Assistance Act of 1980, or an Amerasian admitted under Section 584 of Public Law 100-202 and amended by Public Law 100-461, is eligible: (10-1-02)F~~

~~a. For seven (7) years from refugee's date of entry; or (4-5-00)~~

~~*b.* With no time limit if the refugee is a veteran honorably discharged for a reason other than alienage, or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**05. Asylees.** An asylee admitted under Section 208 of the Immigration and Nationality Act is eligible: (7-1-99)~~

~~*a.* For seven (7) years from the date asylee status is assigned; or (4-5-00)~~

~~*b.* With no time limit if the asylee is a veteran honorably discharged for a reason other than alienage, or on active duty for other than training in the U.S. Armed Forces, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**06. Deportation Withheld.** An individual whose deportation has been withheld under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act is eligible: (7-1-99)~~

~~*a.* For seven (7) years from the date deportation was withheld; or (4-5-00)~~

~~*b.* With no time limit if the deportee is a veteran honorably discharged for a reason other than alienage, or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**07. Conditional Entrants.** A conditional entrant admitted under Section 203(a)(7) of the Immigration and Nationality Act who is a veteran honorably discharged for a reason other than alienage, or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**08. Parolees.** A person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one (1) year who is a veteran honorably discharged for a reason other than alienage, or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**09. Battered Non-Citizen.** A legal non-citizen admitted to the United States as a battered non-citizen under Section 204(a)(1)(A), or 204(a)(1)(B) of the Immigration and Nationality Act (INA), as a non-citizen whose deportation is suspended under Section 244(a)(3) of the INA who is a veteran honorably discharged for a reason other than alienage, or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (10-1-02)F~~

~~**10. Certain Hmong and Highland Laotians.** Certain Hmong and Highland Laotians who were: (4-5-00)~~

~~*a.* Members of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975; or (4-5-00)~~

~~*b.* The spouse or unmarried dependent child of such an individual; or (4-5-00)~~

~~*c.* The unremarried surviving spouse of such an individual who is deceased. (4-5-00)~~

~~**11. Native Americans.** Native Americans with treaty rights to cross the U.S. borders, American Indians born in Canada to whom the provisions of Section 289 of the Immigration and Nationality Act apply, or members of an Indian tribe as defined in Section 4(e) of the Indian Self-Determination and Education Assistance Act. (4-5-00)~~

204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for Food Stamps, an individual must be a member of one (1) of the groups listed in Subsections 204.01 through 204.14 of this rule. (4-1-03)T

- 01. U.S. Citizen.** A U.S. Citizen; or (4-1-03)T
- 02. U.S. National.** A U.S. National; or (4-1-03)T
- 03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (4-1-03)T
- 04. Veteran Of The U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641 (b) or (c) who was honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (4-1-03)T
- 05. Refugees And Others Fleeing Persecution.** A non-citizen who was: (4-1-03)T
- a.** Admitted into the U.S. as a refugee under 8 U.S.C. 1157 (including those who have adjusted to lawful permanent resident status); or (4-1-03)T
- b.** Granted asylum under 8 U.S.C. 1158 (including those who have adjusted to lawful permanent resident status); or (4-1-03)T
- c.** Granted withholding of deportation or removal under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208 (including those who have adjusted to lawful permanent resident status); or (4-1-03)T
- d.** Admitted into the U.S. as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended); or (4-1-03)T
- e.** Granted status as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Assistance Act of 1980 (including those who have adjusted to lawful permanent resident status); or (4-1-03)T
- 06. Qualified Non-Citizen For At Least Five Years.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who has had a qualified non-citizen status for at least five (5) years; or (4-1-03)T
- 07. Lawful Permanent Resident (LPR) with Forty Quarters Of Work History.** A lawful permanent resident (LPR) who has forty (40) quarters of work history under Title II of the Social Security Act, or can be credited with that work history under 8 U.S.C. 1645; or (4-1-03)T
- 08. Qualified Non-Citizens Receiving Disability-Related Assistance.** Qualified non-citizens, as defined in 8 U.S.C. 1641(b) or (c), who are receiving benefits or assistance for blindness or disability (within the meaning of Section 3(r) of the Food Stamp Act of 1977 (7 U.S.C. 2012(r))); or (4-1-03)T
- 09. Qualified Non-Citizen Children.** Qualified non-citizens, as defined in 8 U.S.C. 1641(b) or (c), who are under age eighteen (18) are eligible for food stamps regardless of their date of entry into the United States; or (10-1-03)T
- 10. Qualified Non-Citizen Seniors.** Qualified non-citizens, as defined in 8 U.S.C. Section 1641(b) or (c), who on August 22, 1996 were age sixty-five (65) or over and were lawfully residing in the United States; or (4-1-03)T
- 11. American Indian Born In Canada.** An American Indian born in Canada under 8 U.S.C. 1359; or (4-1-03)T

12. American Indian Born Outside The U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); or (4-1-03)T

13. Certain Hmong And Highland Laotians. Hmong and Highland Laotians who were: (4-1-03)T

a. Members of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975; or (4-1-03)T

b. The spouse or unmarried dependent child of such an individual; or (4-1-03)T

c. The unremarried surviving spouse of such an individual who is deceased; or (4-1-03)T

14. Victim Of Severe Form Of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13), who meets one (1) of the following: (4-1-03)T

a. Is under the age of eighteen (18) years; or (4-1-03)T

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (4-1-03)T

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (4-1-03)T

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (4-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

218. PERSONS DISQUALIFIED AS FOOD STAMP HOUSEHOLD MEMBERS.

Persons disqualified as Food Stamp household members must not participate in the Food Stamp program. Disqualified household members are not counted in the household size. Disqualified household members' income and resources are counted. Disqualified household members are listed below: (6-1-94)

01. Ineligible Legal Non-Citizen. Ineligible legal non-citizens not meeting citizenship or eligible legal non-citizen requirements. (7-1-98)

02. Persons With Citizenship Questionable. Persons refusing to sign a declaration attesting to citizenship or legal non-citizen status. (7-1-98)

03. Person Refusing SSN. Persons disqualified for failure or refusal to provide a Social Security Number. (6-1-94)

04. JSAP Or Work Registration Noncompliance. Persons disqualified for failure to comply with JSAP or work registration requirements. (4-5-00)

05. Persons With IPV. Persons disqualified for an Intentional Program Violation (IPV). (6-1-94)

06. Voluntary Quit Or Reduction Of Hours Of Work. Persons disqualified for a voluntary quit or reduction in hours of work. (4-5-00)

07. ABAWD Not Meeting Work Requirement. Persons who have received three (3) months of Food Stamp benefits in a three (3) year period without meeting the ABAWD work requirement. (7-1-98)

08. Fugitive Felon. ~~Persons who are determined to be a fugitive felon or probation or parole violator.~~ Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of

probation or parole under a federal or state law.

~~(7-1-98)~~(7-1-03)T

09. Drug Convicted Felon. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (3-30-01)

10. Failure To Cooperate In Paternity Establishment Or Obtaining Support. Persons disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.

To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in the thirty-six (36) month period beginning December 1, ~~1999~~ 2002 and ending November 30, 2002~~5~~. ~~(5-3-03)~~(12-1-02)T

01. Work At Least Eighty Hours Per Month. The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (3-5-03)

- a. Work in exchange for money. (3-15-02)
- b. Work in exchange for goods or services, known as “in-kind” work. (3-15-02)
- c. Unpaid work, with a public or private non-profit agency. (3-15-02)

02. Participate In JSAP Or Another Work Program. The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for at least eighty (80) hours per month. (3-15-02)

03. Combination Of Work And Work Programs. The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

04. Participate In Work Opportunities. The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

05. Residents Of High Unemployment Areas. ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to ~~their~~ his plan. ~~(5-3-03)~~(7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

401. EARNED INCOME.

Earned income includes, but is not limited to, income listed in Section 401. (3-15-02)

01. Wages Or Salary. Wages and salaries of an employee, advances, tips, commissions, meals, and military pay are earned income. Garnishments from wages are earned income. (6-1-94)

02. Self-Employment Income. Income from self-employment, including capital gains, is earned income. Rental property is a self-employment enterprise. The income is earned if a household member manages the

property an average of twenty (20) or more hours per week. Payment from a roomer or boarder is self-employment income. (6-1-94)

03. Training Allowances. Training allowances from programs such as ~~Work Study, and~~ Vocational Rehabilitation are earned income. (7-1-99)(7-1-03)T

04. Payments Under Title I. Payments under Title I, such as VISTA and University Year for Action under P.L. 93-113 are earned income. (6-1-94)

05. On-The-Job Training Programs. WIA income includes monies paid by WIA or the employer. Income from WIA on-the-job training programs is earned income, unless paid to a household member under age nineteen (19). The household member under age nineteen (19) must be under the control of another household member. (3-15-02)

06. Basic Allowance For Housing (BAH). BAH is an Armed Services housing allowance. BAH is counted as earned income. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

405. EXCLUDED INCOME. Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

01. Money Withheld. Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

02. Child Support Payments. Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

03. Earnings Of Child Under Age Eighteen Attending School. Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

04. Retirement Benefits Paid To Former Spouse Or Third Party. Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

05. Infrequent Or Irregular Income. Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

06. Cash Donations. Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

07. Income In Kind. Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

08. Vendor Payments. ~~Vendor payments are monies not legally obligated to the household. Vendor payments are paid directly to a third party by a non-household member. Vendor payments include, but are not limited~~

~~to:~~ A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (6-1-94)(7-1-03)T

~~a. Housing or rent paid by an employer to a third party when the housing is in addition to obligated wages.~~ (6-1-94)

~~b. Payments to a third party for a household expense. The payments must be made by a nonhousehold member not legally bound to pay.~~ (6-1-94)

~~e. Vendor payments for transitional housing for the homeless are not excluded as income.~~ (7-1-98)

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (7-1-03)T

~~0910.~~ **Loans.** Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

101. Money For Third Party Care. Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

a. The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

b. The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)

12. Reimbursements. Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than normal living expenses. Excluded reimbursements are not limited to: (6-1-94)

a. Travel, per diem, and uniforms for job or training. (6-1-94)

b. Out-of-pocket expenses of volunteer workers. (6-1-94)

c. Medical and dependent care expenses. (6-1-94)

d. Pay for services provided by Title XX of the Social Security Act. (6-1-94)

e. Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)

f. Work-related and dependent care expenses paid by the JSAP program. (6-1-94)

g. Transitional child care payments. (6-1-94)

h. Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)

123. Federal Earned Income Tax Credit (EITC). Federal EITC payments are excluded as income. (9-1-94)

14. Work Study. Work Study income received while attending post-secondary school is excluded as income. (7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

537. DEPENDENT CARE RESTRICTIONS.

Dependent care restrictions are listed below: (6-1-94)

01. Care By Household Member. Dependent care cannot be deducted if the care is provided by another household member. (6-1-94)

02. In-Kind Payment. Dependent care cannot be deducted if the payment is in-kind, such as food or exchanges for shelter. (6-1-94)

03. Vendor Payment. Dependent care cannot be deducted if paid by vendor payment. (6-1-94)

04. Education Exclusion. Dependent care cannot be deducted if income for dependent care is excluded from educational income. (6-1-94)

05. Spouse Can Give Care. Dependent care cannot be deducted if the spouse in the home is physically capable of the dependent care and is not working, seeking work, or registered for work. (6-1-94)

06. Paid Or Reimbursed Dependent Care ~~Repaid~~. Dependent care cannot be deducted if ~~repaid~~ paid or reimbursed under a ~~F~~federal child care program. ~~Federal programs include At Risk, Child Care Development Block Grant Act of 1990, Transitional Child Care Program, or Title IV-A of the Social Security Act child care payments.~~ (6-1-94)(7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

616. DECREASES OR CLOSURE OF FOOD STAMPS.

If a change results in a decrease or closure of Food Stamps, the Department must provide notice. ~~The notice must be sent within ten (10) days of the date the change is reported.~~ The change must be effective the first month following timely notice, unless the change does not require ten (10) day advance notice. If the household does not respond to the request for proof, or does respond but refuses to provide sufficient information or fails to provide required proof of a change affecting eligibility by the requested date, send a closure notice. The notice must explain the reason for the closure. The notice must advise the household of the need to submit a new application if it wishes to continue participating in the program. If the household fails to provide required proof of a change affecting Food Stamp amount by the requested date, and the change would result in decreased benefits, no deduction is allowed or benefits are decreased. If the household provides the change verification after the date requested, act on the change as if it was an increase. The effective date of the change is the month after the month the change is verified. ~~(3-15-02)~~(7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

753. SPONSORED LEGAL NON-CITIZENS.

Sponsored legal non-citizens are lawfully admitted for permanent United States residence, as defined in Sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. A sponsor executes an ~~I-864~~ affidavit of support ~~or similar agreement~~ on behalf of legal non-citizen, as a condition of the legal non-citizen's entry or admission into the United States as a permanent resident. The income and resources of the sponsor will be deemed until the legal non-citizen becomes a naturalized citizen or until he has worked forty (40) qualifying quarters of coverage under Title II of the Social Security Act, or the sponsor dies. A qualifying quarter includes a quarter worked by the legal non-citizen's parent while the legal non-citizen was under eighteen (18) and a quarter worked by the legal non-citizen's spouse during marriage if the legal non-citizen remains married to the spouse or the spouse is deceased. Any quarter after January 1, 1997 in which a legal non-citizen received any ~~F~~federal means-tested benefit is not counted as a qualifying quarter. ~~(3-15-02)~~(4-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

756. EXCEPTIONS TO SPONSOR DEEMING.

Exceptions to sponsor deeming are listed in Subsections 756.01 through 756.03 of this rule. ~~(3-15-02)~~(4-1-03)T

01. Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support. A legal non-citizen whose sponsor signed an affidavit of support is exempt from deeming if he meets at least one (1) of the following conditions: ~~(3-15-02)~~(4-1-03)T

- a.** The legal non-citizen is a member of the sponsor's Food Stamp household; or ~~(7-1-99)~~(4-1-03)T
- b.** The legal non-citizen is sponsored by an organization or group; or ~~(7-1-99)~~(4-1-03)T
- c.** The legal non-citizen has become a U.S. citizen or naturalized citizen; or (4-1-03)T
- d.** The legal non-citizen's sponsor did not sign affidavit of support Form I-864; or (4-1-03)T
- e.** The legal non-citizen has worked or can get credit for forty (40) quarters of work, including quarters earned by a parent or spouse; or (4-1-03)T
- f.** The legal non-citizen's sponsor is deceased; or (4-1-03)T
- eg.** The legal non-citizen is not required to have a sponsor under the Immigration and Nationality Act. This includes a refugee, asylee, deportee, parolee or Cuban or Haitian entrant; or ~~(7-1-99)~~(4-1-03)T
- h.** The legal non-citizen is a child under the age of eighteen (18). (10-1-03)T

02. Battered Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support. For sponsor deeming, a battered legal non-citizen includes the non-citizen and the child of the non-citizen. The non-citizen or child must be battered in the U.S. by a spouse, parent, or member of the family in the same household. The non-citizen must not participate in, or acquiesce to, the battering of the child. (3-15-02)

- a.** A battered legal non-citizen whose sponsor signed an affidavit of support is exempt from the sponsor deeming requirement for one (1) year, if the need for Food Stamps is connected to the battery and the legal non-citizen no longer lives with the batterer. (3-15-02)
- b.** The exemption from the sponsor deeming requirement can exceed more than one (1) year if the legal non-citizen demonstrates the battery has been recognized in an order of a judge or by the INS and the need for Food Stamps is connected to the battery. (7-1-99)

03. Indigent Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support. A non-citizen is indigent if ~~the Department determines he is unable to obtain food and shelter without receiving Food Stamps~~ the household income does not exceed one-hundred thirty percent (130%) of the poverty income guideline (gross income limit) for the household size. (4-1-03)T

- a.** For an indigent non-citizen, the Department counts ~~only~~ the noncitizen's own income and the cash ~~or in-kind~~ income and resources actually provided by the sponsor and spouse who signed an affidavit of support. ~~Only actual income and resources are counted for one (1) year after the indigent determination is made.~~ ~~(3-15-02)~~(4-1-03)T
- b.** A legal non-citizen that satisfies the indigent exemption criteria is exempt from deeming for twelve (12) months. The exemption can be renewed for additional twelve-month periods. (4-1-03)T
- c.** If a legal non-citizen is granted an indigence exemption, the department must provide written notification to the Statistics Branch of the INS on an annual basis. Required information includes, written notice of the determination, the sponsored legal non-citizen's name, and the sponsor's name. (4-1-03)T
- d.** A legal non-citizen can elect to decline the indigent exemption to avoid sponsor liability, and notification to the INS. (4-1-03)T
- e.** If the legal non-citizen declines the indigent exemption, the household is subject to sponsored

deeming.

(4-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

760. OVERISSUANCE DUE TO INCORRECT SPONSOR DATA.

The sponsor who signed an I-864 affidavit of support ~~between February 1, 1983 and~~ on or after December 18~~9~~2, 1997 and sponsored legal non-citizen are both liable for repayment of overissuances caused by incorrect sponsor data, unless the sponsor had good cause. Good cause exists unless the sponsor gives false statements or willfully withholds data. The sponsor may have a fair hearing to contest the fault and liability. If the sponsor had good cause or was without fault for incorrect data, the legal non-citizen's household is solely liable for the overissuance repayment. If the sponsor did not have good cause, start a claim against the sponsor, the legal non-citizen's household, or both. Claims may be started against both parties at the same time. ~~Start a~~ A claim may be started against the party most likely to repay the claim first. If the first party fails to respond to the demand letter within twenty (20) days, ~~start~~ a claim may be started against the other party. ~~Identify~~ The claim must be identified as either an IHE or IPV claim.

~~(7-1-99)~~(4-1-03)T

761. COLLECTING CLAIMS AGAINST SPONSORS WHO SIGNED AN I-864 AFFIDAVIT OF SUPPORT ~~BETWEEN FEBRUARY 1, 1983 AND~~ ON OR AFTER DECEMBER 18~~9~~2, 1997.

~~Start collection by sending~~ The Department must send a demand letter to the sponsor. The demand letter must include the amount owed, the reason for the claim, and the repayment options. The demand letter must tell the sponsor he will not have to repay, if he can show he did not give false statements or withhold information about his circumstances. Collection action may be stopped if documentation is obtained showing the sponsor cannot be located. Collection action may be stopped if the cost of collection exceeds the amount to be recovered. If the sponsor responds to the demand letter, ~~collect~~ a lump sum cash payment may be collected if the sponsor can pay the claim at one (1) time. If the sponsor cannot pay by lump sum, ~~negotiate~~ a monthly repayment schedule may be negotiated. Sponsor repayments must be recorded in the case file and identified as either an IHE or IPV claim.

~~(7-1-99)~~(4-1-03)T

762. COLLECTING CLAIMS AGAINST SPONSORED LEGAL NON-CITIZENS.

~~Collect~~ Claims may be collected against sponsored legal non-citizens with a sponsor who signed an I-864 affidavit of support ~~between February 1, 1983 and~~ on or after December 18~~9~~2, 1997 ~~using procedures listed below. Take~~ Action may be taken to collect, ~~whether or not the legal non-citizen household currently gets Food Stamps by~~ submitting an IHE or IPV.

~~(7-1-99)~~(4-1-03)T

~~01. **IHE Determined.** An IHE results if information provided about the sponsor or sponsor's spouse was wrong because the household misunderstood or failed to provide data. Start a claim against the legal non-citizen's household.~~

~~(7-1-98)~~

~~02. **IPV Determined.** An IPV results if information provided about the sponsor or sponsor's spouse was incorrect because the household concealed or provided false information. Start a claim against the legal non-citizen's household.~~

~~(7-1-98)~~

~~03. **IPV Referral.** Pursue an IPV if enough evidence exists to show information from the sponsor or the sponsor's spouse was false or concealed through misrepresentation or willful withholding by the legal non-citizen. Handle the claim as an IHE until the IPV decision is made. Start a claim against the legal non-citizen's household.~~

~~(7-1-98)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED

DOCKET NO. 16-0305-0302

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2003 and October 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-1004(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 15, 2003.

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 rulemaking:

These rules are being amended to clarify the process for applicants to provide Social Security Numbers (SSN) at the time of application. There are new sections being added as well as amending a section for home and community based services and waiver services. These rules are also being amended to clarify asset transfers and resources of income as well as make changes for grammatical and cite references.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary in order to comply with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made due to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Maggie Manzo at (208) 334-5753.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 22, 2003.

DATED this 18th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0302

105. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

The ~~participant applicant~~ must provide his social security number (SSN) or proof he has applied for an SSN, to the Department before approval of eligibility. ~~The participant~~ If the applicant has more than one (1) SSN, all numbers must be provided—all SSNs if he has more than one (1). AABD must not be denied, delayed, or stopped if the SSN has been applied for, but not issued. The SSN must be verified by the Social Security Administration (SSA) electronically. AN SSN is verified when it is provided to the Department by SSA. An applicant with an unverified SSN is not eligible for AABD cash or Medicaid benefits. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (7-1-99)(7-1-03)T

01. Application For SSN. To be eligible the applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (7-1-03)T

02. Failure To Apply For SSN. The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (7-1-03)T

a. Is a member of a recognized religious sect or division of the sect; and (7-1-03)T

b. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (7-1-03)T

03. SSN Requirement Waived. An applicant may have the SSN requirement waived when he is: (7-1-03)T

a. Only eligible for emergency medical services as described in Section 801 of these rules; or (7-1-03)T

b. A waived newborn child as described in Section 800 of these rules. (7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS).

200. RESOURCES DEFINED.

Resources are cash, personal property, ~~and~~ real property, and notes receivable on real property. A participant, or spouse, must have the right, authority, or power to convert the resource to cash. The participant must have the legal right to use the resource for support and maintenance. (7-1-99)(10-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

273. -- 2767. (RESERVED).

277. EXCLUDED REAL ESTATE CONTRACT.

~~The principal balance of a real estate contract is excluded from resources of a participant in long-term care. The contract must meet the conditions in Subsections 277.01 through 277.03. The exclusion ends the first month the contract does not produce income. The principal balance is a resource the first moment of the next month. Interest payments on the contract are income for patient liability. This exclusion is not used if it is more restrictive to~~

~~Medicaid eligibility than counting the value of the contract.~~

~~(3-15-02)~~

~~01. **Income Producing.** The contract produces income when payments are made to the participant by the purchaser.~~

~~(4-5-00)~~

~~02. **Adequate Rate Of Return.** The contract has a rate of return no less than two (2) percentage points below the bank market rate for loans on similar property in the community when the contract was signed.~~

~~(4-5-00)~~

~~03. **Remainder To Estate.** The remainder of the contract is part of the estate when the participant dies. There are no provisions in the contract having the intent or effect of making the remainder unavailable to Medicaid estate recovery.~~

~~(4-5-00)~~

(BREAK IN CONTINUITY OF SECTIONS)

436. REAL ESTATE CONTRACT INCOME.

Payments received on the interest of a negotiable real estate contract are unearned income. Payments received on the principal of a negotiable real estate contract are a resource. Payments received on a nonnegotiable real estate contract are unearned income. ~~Payments received on an excluded real estate contract of a long-term care participant are unearned income.~~

~~(7-1-99)(10-1-03)T~~

(BREAK IN CONTINUITY OF SECTIONS)

721. LONG-TERM CARE RESIDENT AND MEDICAID.

A resident of a long-term care facility must meet the AABD eligibility criteria to be eligible for Medicaid. A long-term care facility is a nursing facility, or an intermediate care facility for the mentally retarded. ~~The need for long-term care certification~~ is determined using IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," ~~Subsection 160.09.~~

~~(7-1-99)(10-1-03)T~~

01. Resources Of Resident. The resident's resource limit is two thousand dollars (\$2,000). Resources of a married person in long-term care are computed using Federal Spousal Impoverishment rules. Under the SSI method, spouses can use the three thousand dollar (\$3,000) couple resource limit if more advantageous. The couple must have lived in the nursing home, in the same room, for six (6) months. ~~The principal balance of an excluded real estate contract is not a resource, unless it is more restrictive to Medicaid eligibility than counting the contract as a resource.~~

~~(7-1-99)(10-1-03)T~~

02. Medicaid Income Limit Of Long-Term Care Resident Thirty Days Or More. The monthly income limit for a long-term care facility resident is three (3) times the Federal SSI benefit for a single person. To qualify for this income limit the participant must be, or be likely to remain, in long-term care at least thirty (30) consecutive days.

~~(7-1-99)(10-1-03)T~~

03. Medicaid Income Limit Of Long-Term Care Resident Less Than Thirty Days. The monthly income limit, for the resident of a long-term care facility for less than thirty (30) consecutive days, is the AABD income limit for the participant's living situation before long-term care. Living situations before long-term care do not include hospital stays.

~~(7-1-99)~~

04. Income Not Counted. The income listed in Subsections 721.04.a. through 721.04.e. of these rules is not counted to compute Medicaid eligibility for a long-term care facility resident. This income is counted in determining participation in the cost of long-term care. ~~A VA "Aid and Attendance" allowance and any increment for VA Unusual Medical Expenses is not counted in determining participation in the cost of long-term care, unless the veteran lives in a state operated veterans' home.~~

~~(3-30-01)(10-1-03)T~~

a. Excluded AABD income. Income excluded or disregarded, in determining eligibility for AABD

cash, is not counted.

(7-1-99)(10-1-03)T

b. ~~RSDI increase.~~ The September 1972 RSDI increase is not counted.

(7-1-99)(10-1-03)T

c. ~~VA aid and attendance.~~ Any VA Aid and Attendance allowance, including any increment which is the result of a VA Unusual Medical Expense allowance, is not counted. These allowances are not counted for patient liability, unless the veteran lives in a state operated veterans' home.

(3-30-01)(10-1-03)T

d. ~~RSDI COLA increase.~~ RSDI benefit increases, from cost-of-living adjustments (COLA) after April 1977, are not counted if they made the participant lose SSI or AABD cash. The COLA increases after SSI or AABD cash stopped are not counted.

(7-1-99)(10-1-03)T

e. ~~Income paid into exempt income trust.~~ Income paid into an income trust exempt from counting for Medicaid eligibility under Subsections ~~701.01 through 701.03~~ 872.02 of these rules is used for patient liability ~~is not counted~~. Income paid to the trust and not used for patient liability, is subject to the asset transfer penalty.

(7-1-99)(10-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

787. ~~PERSON ENTITLED TO HOME AND COMMUNITY BASED SERVICES (HCBS).~~

An aged, blind or disabled ~~person participant, who is~~ not income eligible for SSI or AABD cash, in his own home; ~~because of income deeming or income limits or community setting,~~ is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.1207 of these rules, and meets all requirements in one (1) of the waiver Sections 788 through 791 of these rules.

(7-1-99)(7-1-03)T

~~01. Age.~~ Is at least eighteen (18) years old.

(4-5-00)

~~02. AABD Criteria.~~ If under age sixty five (65), meets the AABD blindness or disability criteria.

(7-1-99)

~~031. AABD Resource Limit.~~ Meets the AABD single person resource limit.

(7-1-99)(7-1-03)T

~~042. HCBS Income Limit.~~ For the HCBS Aged and Disabled (A&D) waiver, has income of the participant must not exceeding three (3) times the Federal SSI benefit payable monthly to benefit for a single person. For the HCBS Developmentally Disabled (DD) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. A married participant living at home with his spouse who is not an HCBS participant, may choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple may choose between the SSI and CP methods.

(3-15-02)(7-1-03)T

~~05. Eligible For Long Term Care.~~ For HCBS A&D, meets the medical conditions for nursing facility care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Subsection 160.09. For HCBS DD, meets the medical conditions for ICF/MR care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143.

(3-30-01)

~~063. Maintained In The Community.~~ For HCBS A&D, can The applicant must be able to be maintained safely and effectively in his own home or in the community with A&D waiver services furnished under the Department's HCBS waiver. For HCBS DD, can be maintained in the community with DD the waiver services.

(5-3-03)(7-1-03)T

~~074. Cost Of Care.~~ For HCBS A&D, can be cared for in the community at a cost not to exceed the statewide average cost of care for the participant's level of care. The estimated cost of care in a nursing facility is the statewide average rate for the level of care the participant requires, charged by the type of facility where he would be placed if he were not living at home. For traumatic brain injury patients, the estimated cost of care is at the nursing facility special rate. The cost of the participant's care must be determined to be cost effective as provided in IDAPA

16.03.09, "Rules Governing the Medical Assistance Program".

~~(5-3-03)~~(7-1-03)T

085. ~~Care Requirement Waiver Services Needed.~~ *For HCBS A&D,* The participant must ~~require need~~ and receive, or be likely to ~~require need~~ and receive, ~~HCBS A&D~~ waiver services for thirty (30) consecutive days. *For HCBS-DD, must require and receive, or be likely to require and receive, HCBS-DD* The participant is ~~ineligible~~ when there is a break in need for, or receipt of, waiver services for thirty (30) consecutive days. ~~(5-3-03)~~(7-1-03)T

096. ~~Effective Date.~~ *Medicaid is* Waiver services are effective the first day ~~of the thirty (30) day period~~ the participant is likely to ~~require need~~ and receive ~~HCBS A&D or HCBS-DD~~ waiver services. ~~The date of the FSI resource assessment is the start date of the first thirty day (30) period after September 30, 1989, that the participant is likely to require HCBS A&D or HCBS-DD waiver services.~~ Medicaid begins the first day of the month in which the first day of approved waiver services are received. ~~(1-1-03)~~(7-1-03)T

10. ~~Participant With Spouse.~~ *A married participant living at home with his spouse who is not and HCBS participant, can choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple can choose between the SSI and CP methods.* ~~(7-1-99)~~

11. ~~Continued Services.~~ *The participant must continue to require and receive waiver services. The participant is ineligible when there is a lapse in need for or receipt of waiver services for thirty (30) days.* ~~(7-1-99)~~

1207. ~~Annual Limit.~~ The Department limits the number of participants approved for waiver services each year. A participant who applies for ~~HCBS Medicaid, waiver services~~ after the annual limit ~~on HCBS A&D or HCBS-DD waiver participants~~ is reached, must be denied ~~Medicaid~~ waiver services. ~~(3-30-01)~~(7-1-03)T

788. AGED AND DISABLED (A&D) WAIVER.

To be eligible the participant must be disabled or at least sixty-five (65) years of age and need nursing facility level of care as provided in IDAPA 16.03.09 "Rules Governing the Medical Assistance Program". ~~(7-1-03)T~~

789. DEVELOPMENTALLY DISABLED (DD) WAIVER.

To be eligible the participant must be at least eighteen (18) years of age and need the level of care provided by an intermediate care facility for the mentally retarded (ICF/MR) under IDAPA 16.03.09 "Rules Governing the Medical Assistance Program". ~~(7-1-03)T~~

790. TRAUMATIC BRAIN INJURY (TBI) WAIVER.

To be eligible the participant must have sustained a traumatic brain injury on or after his twenty-second birthday and need nursing facility level of care as provided in IDAPA 16.03.09 "Rules Governing the Medical Assistance Program". ~~(7-1-03)T~~

791. IDAHO STATE SCHOOL AND HOSPITAL (ISSH) WAIVER.

To be eligible the participant must be at least fifteen (15) years of age but less than nineteen (19) years of age and is currently at or would be placed at the Idaho State School and Hospital (ISSH) if not for waiver services. ~~(7-1-03)T~~

~~788~~2. -- 799. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

840. (RESERVED).

841. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.

A participant ~~or spouse who meets a condition~~ is not subject to the asset transfer penalty for taking any action described in Subsections 8401.01 through 8401.154 ~~is not subject to the asset transfer penalty~~ of these rules. ~~(7-1-99)~~(10-1-03)T

01. Home To Spouse. The asset transferred was a home. Title to the home was transferred to the

spouse. (7-1-99)

02. Home To Minor Child Or Disabled Adult Child. The asset transferred was a home. Title to the home was transferred to the child of the participant or spouse. The child must be under age twenty-one (21) or blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

03. Home To Brother Or Sister. The asset transferred was a home. Title to the home was transferred to a brother or sister of the participant or spouse. The brother or sister must have an equity interest in the transferred home. The brother or sister must reside in that home for at least one (1) year immediately before the month the participant starts long-term care. (7-1-99)

04. Home To Adult Child. The asset transferred was a home. Title to the home was transferred to a son or daughter of the participant or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in that home for at least two (2) years immediately before the month the participant started long-term care. The ~~son or daughter~~ adult child must ~~have~~ prove he provided nursing facility level medical care to the participant which permitted him to live at home rather than enter long-term care. ~~(7-1-99)~~(10-1-03)T

05. Benefit Of Spouse. The assets were transferred to the participant's spouse or to another person for the sole benefit of the spouse. (7-1-99)

06. Transfer From Spouse. The assets were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. (7-1-99)

07. Transfer To Child. The assets were transferred to the participant's child, or to a trust established solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. (7-1-99)

~~**08. Transfer To Trust For Person Under Age Sixty Five.** The assets were transferred to a trust for the sole benefit of a person under age sixty five (65). "Sole benefit" means any remainder in the trust after the person's death must go to his estate, not to another person. The person must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)~~

098. Intent To Get Fair Market Value. The participant or spouse proves he intended to dispose of the assets at fair market value or for other adequate consideration. (7-1-99)

~~**109. Assets Returned.** All assets transferred for less than fair market value have been returned to the participant. (7-1-99)~~

~~**110. No Medicaid Purpose Qualification Not The Intent.** The participant or spouse proves the assets were transferred exclusively for a purpose other than to qualify for Medicaid. (7-1-99)(10-1-03)T~~

~~**121. Undue Hardship.** Denying eligibility would cause an undue hardship. Undue hardship exists if any of the conditions in Subsections 8401.121.a. through 8401.121.c. of these rules apply. (4-5-00)(10-1-03)T~~

~~**a.** The participant proves he is not able to pay for his nursing facility services or his HCBS waiver services by any other way. ~~He~~ means and assigns his rights to recover the asset to the state of Idaho. (7-1-99)(10-1-03)T~~

~~**b.** The participant proves he did not knowingly transfer the asset. ~~He~~ and assigns his rights to recover the asset to the state of Idaho. (7-1-99)(10-1-03)T~~

~~**c.** The HCBS waiver participant proves he would be deprived of food, clothing or shelter if all income transferred to the trust is used only for HCBS waiver costs. ~~He~~ and assigns his rights to recover the asset to the state of Idaho. If the participant proves undue hardship, the income paid to meet his needs for food, clothing or shelter is exempt from the asset transfer penalty. It does not invalidate the trust. It is not income for eligibility. (7-1-99)(10-1-03)T~~

132. Exception To Fair Market Value. The amount received is adequate, even if not fair market value. This exception must meet one (1) of the conditions in Subsections ~~690.13.a.~~ 841.12.a. through ~~690.13.e.~~ 841.12.c. of these rules. ~~(7-1-99)~~(10-1-03)T

- a. A forced sale was done under reasonable circumstances. (7-1-99)
- b. Little or no market demand exists for the type of asset transferred. (7-1-99)
- c. The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred asset. (7-1-99)

143. No Benefit To Participant. The participant received no benefit from the asset. This exception must meet one (1) of the conditions in Subsections ~~690.14.a. through 690.14.b.~~ 841.13.a. and 841.13.b. of these rules. ~~(7-1-99)~~(10-1-03)T

- a. The participant or spouse held title to the property only as a trustee for another person. The participant or spouse had no beneficial interest in the property. (7-1-99)
- b. The transfer was done to clear title to property. The participant or spouse had no beneficial interest in the property. (7-1-99)

154. Fraud Victim. The asset was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the assets or property, or its equivalent in damages. ~~The participant~~ and must assign recovery rights to the state of Idaho. ~~(7-1-99)~~(10-1-03)T

~~842.~~ -- 870. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

872. EXEMPT TRUSTS.

A trust, created or funded on or after August 11, 1993, is exempt from trust treatment and not subject to the asset transfer penalty if it meets a condition in Subsections 872.01 through 872.03 of these rules. ~~(7-1-99)~~(10-1-03)T

01. Trust For Disabled Person. To be exempt, a trust for a disabled person must meet all the conditions in Subsections 872.01.a. through 872.01.f. of these rules. ~~(7-1-99)~~(10-1-03)T

- a. The trust contains the assets of a person under age sixty-five (65). (7-1-99)
- b. The person is blind or totally disabled under the Social Security and SSI rules in 20 CFR Part 416. (7-1-99)
- c. The trust is established for the person's benefit by his parent, grandparent, legal guardian or a court. (7-1-99)
- d. The trust is irrevocable. (7-1-99)
- e. The trust is exempt until the person reaches age sixty-five (65) ~~if the trust is not added to or augmented.~~ After the person reaches age sixty-five (65), additions or augmentations are not exempt from trust treatment. ~~(7-1-99)~~(10-1-03)T

f. Upon the person's death, the amount not distributed by the trust must first be paid ~~for~~ to the state of Idaho, up to the amount Medicaid has paid ~~in~~ on the person's behalf ~~by the state of Idaho.~~ ~~(7-1-99)~~(10-1-03)T

02. Income Trust. To be exempt, an income trust must meet all the conditions in Subsections 8702.02.a. through ~~702.01.g.~~ 872.02.f. of these rules. ~~(7-1-99)~~(10-1-03)T

a. The trust is established for the sole benefit of a person who would be eligible for Medicaid in long-term care, or eligible for HCBS except for excess income. ~~(7-1-99)~~(10-1-03)T

b. All the money in the trust comes from the person's pensions, Social Security and other income, including income earned by the trust. Money paid into the trust is not income for Medicaid eligibility the month received. Money paid into the trust is income for patient liability or client participation. (7-1-99)

c. The trust is irrevocable. The trust document may include a clause allowing the trust to be revoked if the participant leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income, if Medicaid is reimbursed up to the amount Medicaid has paid on the person's behalf. ~~(7-1-99)~~(10-1-03)T

d. The trust only provides payments for patient liability or client participation, unless the payment meets the undue hardship penalty exception. (7-1-99)

e. Income transferred to the trust and not used to compute patient liability or client participation, is subject to the asset transfer penalty, unless the payment meets the undue hardship penalty exception. (7-1-99)

~~**f.** *The trust may be dissolved without penalty when the participant is no longer a long-term care or HCBS Medicaid participant for a reason other than death.*~~ ~~(7-1-99)~~

gf. Upon the person's death, the amount not distributed by the trust must first be paid for to the state of Idaho, up to the amount Medicaid has paid ~~in~~ on the person's behalf ~~by the state of Idaho.~~ ~~(7-1-99)~~(10-1-03)T

03. Trust Managed By Non-Profit Association For Disabled Person. To be exempt, a trust managed by non-profit association for a disabled person must meet all the conditions in Subsections 872.03.a. through 872.03.e. of these rules. ~~(7-1-99)~~(10-1-03)T

a. The trust is established and managed by a nonprofit association. The nonprofit association must not be the participant, his parent or his grandparent. (7-1-99)

b. The trust contains the assets of a disabled person. The person must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

c. Accounts in the trust are established only for the benefit of disabled persons. An account can be established by the disabled person, his parent, grandparent, legal guardian, or a court. ~~*The trust can pool accounts for investment and management purposes.*~~ A separate account ~~in the pool~~ must be maintained for ~~the participant~~ each beneficiary of the trust. For purposes of investment and management, the trust may pool the funds in the accounts. ~~(7-1-99)~~(10-1-03)T

d. The trust is irrevocable. (7-1-99)

e. Upon the person's death, the amount not distributed by the trust must first be paid for to the state of Idaho, up to the amount Medicaid has paid ~~in~~ on the person's behalf ~~by the state of Idaho.~~ ~~(7-1-99)~~(10-1-30)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI)

DOCKET NO. 16-0308-0302

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-1004(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 15, 2003.

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 rulemaking:

Section 133 is being amended to clarify the Social Security Number (SSN) requirements to align with the federal requirements that the SSN must be verified before an applicant is eligible for TAFI benefits.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made due to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Tiffany Kinzler at (208) 334-6540.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 22, 2003.

DATED this 8th day of August, 2003.

Sherri Kovach
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DHW – Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0302

133. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

An applicant must provide his Social Security Number (SSN), or proof of an application he has applied for an SSN, must be provided to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. When an SSN is unverified, the applicant is not eligible for TAFI benefits and makes the family ineligible for TAFI. The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement. ~~(3-30-01)~~(7-1-03)T

01. Application For SSN. The applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (7-1-03)T

02. Failure To Apply For SSN. The applicant may be granted good cause for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (7-1-03)T

a. Is a member of a recognized religious sect or division of the sect; and (7-1-03)T

b. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (7-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0308
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-209h, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 15, 2003.

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 rulemaking:

These rules are being amended to help the Department respond and protect program participants from abuse or neglect. The rule is being amended to clarify the Department has the right to immediate access of records and copying of those records for investigation of fraud or abuse. Clarification is also being made on suspension of payments to align the Department's rules with federal regulations when investigating alleged fraud or abuse cases. Obsolete language is being deleted as well as updating audit and investigation procedures being used.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety and welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Mond Warren at (208) 334-5997.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 22, 2003.

DATED this 8th day of August, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0308

201. DEFINITIONS - FRAUD, ABUSE AND MISCONDUCT.

For purposes of Sections 200 through 233, unless the context clearly requires otherwise, the following words and terms ~~shall~~ will have the following meanings: ~~(4-5-00)~~(10-1-03)T

01. Abuse Or Abusive. Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a medical assistance recipient. It also includes recipient practices that result in unnecessary cost to the Medicaid program, or recipient utilization practices which may endanger their personal health or safety. (4-5-00)

02. Access To Documentation And Records. To review and copy records at the time a written request is made during normal business hours. Documentation includes all materials as described in Section 202 of these rules. (10-1-03)T

023. Claim. Any request or demand for payment of items or services under the state's medical assistance program, whether under a contract or otherwise. (4-5-00)

034. Conviction. An individual or entity is considered to have been convicted of a criminal offense: (3-30-01)

a. When a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (3-30-01)

b. When there has been a finding of guilt against the individual or entity by a federal, state, or local court; (3-30-01)

c. When a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court; or (3-30-01)

d. When the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. (3-30-01)

045. Exclusion. A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid. (4-5-00)

056. Fraud Or Fraudulent. An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. (4-5-00)

067. Knowingly, Known, Or With Knowledge. A person, with respect to information or an action, who: has actual knowledge of the information or an action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (4-5-00)

078. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. (4-5-00)

089. Medical Assistance. Shall mean payments for part or all of the cost of such care and services allowable within the scope of Title XIX and XXI of the federal Social Security Act as amended as may be designated by Department rules. (4-5-00)

~~09~~**10. Ownership Or Control Interest.** A person or entity that: has an ownership interest totaling twenty-five percent (25%) or more in an entity; is an officer or director of an entity that is organized as a corporation; is a partner in an entity that is organized as a partnership; or is a managing member in an entity that is organized as a limited liability company. (4-5-00)

~~10~~**1. Person.** An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private. (4-5-00)

~~11~~**2. Program.** The Medicaid Program or any part thereof, including Idaho's state plan. (4-5-00)

~~12~~**3. Recoup And Recoupment.** ~~That payment of provider claims will be withheld for the purpose of recovering funds which have been paid for items or services the Department has subsequently determined should not have been paid.~~ The collection of funds for the purpose of recovering overpayments made to providers for items or services the Department has determined should not have been paid. The recoupment may occur through the collection of future claims paid or other means. (~~4-5-00~~)(10-1-03)T

~~13~~**4. Sanction.** Any abatement or corrective action taken by the Department which is appealable under Section 224 of these rules. (4-5-00)

~~14~~**5. State Plan.** The Medicaid Program as it exists in Idaho. (4-5-00)

~~15. Provider Suspension.~~ ~~The temporary barring of a person from participation in the Medicaid program pending further investigation or additional action.~~ (4-5-00)

202. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.

~~01. Documentation Of Services.~~ Providers shall must generate documentation at the time of service sufficient to support each claim or service, and as required by rule, statute, or contract. Documentation shall must be legible and consistent with professionally recognized standards. Documentation shall must be retained for a period of five (5) years from the date the item or service was provided. The Department or its authorized agent shall be given immediate access to such documentation upon written request. Documentation to support claims for services includes, but is not limited to, medical records, treatment plans, medical necessity justification, assessments, appointment sheets, patient accounts, financial records or other records regardless of its form or media. (~~4-5-00~~)(10-1-03)T

~~02. Immediate Access To Records.~~ Providers must grant to the Department and its agents, the U.S. Department of Health and Human Services and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 202.01 of these rules (10-1-03)T

~~03. Copying Records.~~ The Department and its authorized agents may copy any record as defined in Subsection 202.01 of these rules. They may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. (10-1-03)T

~~04. Removal Of Records From Provider's Premises.~~ The Department and its authorized agents may remove from the provider's premises copies of any records as defined in Subsection 202.01 of these rules. (10-1-03)T

203. INVESTIGATION AND AUDITS.

Investigation and audits of provider fraud, abuse or misconduct conducted by the Department's Bureau of Audits and Investigations or its successor are governed under Sections 200 through 233 of these rules. (10-1-03)T

~~01. Investigation Methods.~~ Pursuant to Under Section 56-227(e), Idaho Code, the Department shall will investigate and identify potential instances of fraud, abuse, or other misconduct by any person related to involvement in the program. Methods may include, but are not limited to, review of computerized reports, referrals to

or from other agencies, health care providers or persons, or conducting audits and interviews, probability sampling and extrapolation, and issuing subpoenas to compel testimony or the production of records. Reviews may occur on either pre-payment or post-payment basis. ~~(3-30-01)~~(10-1-03)T

02. Probability Sampling. Probability sampling shall be done in conformance with generally accepted statistical standards and procedures. "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events). (3-30-01)

03. Extrapolation. Whenever the results of a probability sample are used to extrapolate the amount to be recovered, the demand for recovery shall be accompanied by a clear description of the universe from which the sample was drawn, the sample size and method used to select the sample, the formulas and calculation procedures used to determine the amount to be recovered, and the confidence level used to calculate the precision of the extrapolated overpayment. "Extrapolation" means the methodology whereby an unknown value can be estimated by projecting the results of a probability sample to the universe from which the sample was drawn with a calculated precision (margin of error). (3-30-01)

204. ~~SURVEILLANCE AND UTILIZATION REVIEW (S/UR) COMMITTEE (RESERVED).~~
~~Instances of suspected fraud, abuse, or other misconduct may be referred to a review committee organized by the Department. The committee shall consist of health professionals and other staff appointed by the Director or his designee. The committee may also consult with other professionals as determined necessary by the committee. The function of the committee will be to review and make recommendations concerning corrective action. (4-5-00)~~

205. DEPARTMENT ACTIONS.
When an instance of fraud, abuse, or other misconduct is identified, the Department ~~shall~~ will take action to correct the problem as provided in this section. Such corrective action may include, but is not limited to, denial of payment, recoupment, payment suspension, provider agreement suspension, termination of provider agreement, imposition of civil monetary penalties, exclusion, recipient lock-in, referral for prosecution, or referral to state licensing boards. ~~(4-5-00)~~(10-1-03)T

206. DENIAL OF PAYMENT.
~~The Department may refuse to pay any and all claims it determines are for items or services: The following are reasons the Department may deny payment. (3-30-01)~~(10-1-03)T

01. Billed Services Not Provided Or Not Medically Necessary. The Department may deny payment for any and all claims it determines are for items or services: (10-1-03)T

a. Not provided or not found by the Department to be medically necessary. ~~(4-5-00)~~(10-1-03)T

~~02b.~~ Documentation. Not documented to be provided or medically necessary. ~~(4-5-00)~~(10-1-03)T

~~03c.~~ Recognized Standards. Not provided in accordance with professionally recognized standards of health care. ~~(4-5-00)~~(10-1-03)T

~~04d.~~ Prohibited Physician Referral. Provided as a result of a prohibited physician referral under 42 CFR Part 411, Subpart J. ~~(4-5-00)~~(10-1-03)T

052. Contrary To Rules Or Provider Agreement. ~~Provided~~ The Department may deny payment when services billed are contrary to ~~these~~ Department rules, ~~IDAPA 16.03.10, "Rules Governing Medicaid Provider Reimbursement in Idaho,"~~ or the provider agreement. ~~(4-5-00)~~(10-1-03)T

03. Failure To Provide Immediate Access To Records. The Department may deny payment when the provider does not allow immediate access to records as defined in Section 202 of these rules. (10-3-03)T

(BREAK IN CONTINUITY OF SECTIONS)

208. SUSPENSION OF PAYMENTS PENDING INVESTIGATION.

~~In the event that~~ The Department ~~identifies~~ may suspend payments in whole or part in a suspected case of fraud or abuse ~~and the Department has reason to believe that payments made during the investigation may be difficult or impractical to recover, the Department may suspend or withhold payments on any pending or subsequently submitted claims while the provider continues to participate in the program pending investigation and conclusion of legal proceedings related to the provider's alleged fraud or abuse.~~ (4-5-00)(10-1-03)T

01. Basis For Suspension Of Payments. When the Department through reliable evidence suspects fraud or abuse, or when a provider fails to provide immediate access to records, Medicaid payments may be withheld or suspended. (10-1-03)T

02. Notice Of Suspension Of Payments. The Department may withhold payments without first notifying the provider of its intention to do so. The Department will send written notice according to 42 CFR 455-23(b) within five (5) days of taking such action. (10-1-03)T

03. Duration Of Suspension Of Payments. The withholding of payment actions under Section 208 of these rules will be temporary and will not continue after: (10-1-03)T

a. The Department or the prosecuting authorities determine there is insufficient evidence of fraud or willful misrepresentation by the provider; or (10-1-03)T

b. Legal proceedings related to the provider's alleged fraud or abuse are completed. (10-1-03)T

209. INTERIM PROVIDER AGREEMENT SUSPENSION.

In the event ~~that~~ the Department identifies a suspected case of fraud or abuse, ~~and it determines that it may summarily suspend the provider agreement when such action is necessary to prevent or avoid immediate danger to the public health or safety, the Department may summarily suspend a provider or employee of a provider~~ This provider agreement suspension temporarily bars the provider from participation in the Medicaid Program, pending investigation and Department action. Such a finding will be incorporated in the order. The Department will notify the provider shall be given notice but the order of the suspension. The suspension is effective when issued immediately upon written, electronic, or oral notification. (4-5-00)(10-1-03)T

210. APPEAL OF IMMEDIATE ACTION (RESERVED).

~~When payments have been suspended or withheld or the provider's agreement is suspended pending investigation, the Department shall provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal.~~ (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

212. CIVIL MONETARY PENALTIES.

~~Pursuant to~~ Under Section 56-209h, Idaho Code, the Department may assess civil monetary penalties against a provider, any officer, director, owner, and ~~or~~ managing employee for conduct identified in Subsections 211.01 through 211.09 of these rules. The amount of penalties ~~shall~~ may be up to one thousand dollars (\$1,000) for each item or service improperly claimed, except that in the case of multiple penalties the Department may reduce the penalties to not less than twenty-five percent (25%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. These penalties are intended to be remedial, at a minimum recovering costs of investigation and administrative review, and placing the costs associated with non-compliance on the offending provider. (4-5-00)(10-1-03)T

213. MANDATORY EXCLUSIONS FROM THE MEDICAID PROGRAM.

The Department ~~shall~~ will exclude from the Medicaid Program any provider, entity or person that:

~~(4-5-00)~~(10-1-03)T

01. Conviction Of A Criminal Offense. Has been convicted of a criminal offense related to the delivery of an item or service under a federal or any state health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program. (4-5-00)

02. Conviction Of A Criminal Offense Related To Patient Neglect Or Abuse. Has been convicted, under federal or state law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the Department concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a program beneficiary. (4-5-00)

03. Other Exclusions. Is identified by ~~HCF~~ the Centers for Medicare and Medicaid Services (CMS) as having been excluded by another state or the Office of Inspector General or any person ~~HCF~~ CMS directs the Department to exclude. ~~(4-5-00)~~(10-1-03)T

214. TERMS OF MANDATORY EXCLUSIONS FROM THE MEDICAID PROGRAM.

~~No m~~ Mandatory exclusions from the Medicaid Program imposed ~~pursuant to~~ under Subsections 213.01 and 213.02 of these rules, will be for not less than ten (10) years. The exclusion may exceed ten (10) years if aggravating factors are present. In the case of any mandatory exclusion of any person, if the individual has been convicted on two (2) or more previous occasions of one (1) or more offenses for which an exclusion may be effected under this section, the period of exclusion ~~shall~~ will be permanent. ~~(4-5-00)~~(10-1-03)T

215. PERMISSIVE EXCLUSIONS FROM THE MEDICAID PROGRAM.

The Department may exclude any person or entity from the Medicaid Program for a period of not less than one (1) year. ~~(4-5-00)~~(10-1-03)T

01. Endangerment Of Health Or Safety Of A Patient. Where there has been a finding by ~~the Department or Quality Improvement Organization (QIO)~~ a governmental agency against such person or entity of endangering the health or safety of a patient, or of patient abuse, neglect or exploitation. ~~(4-1-03)~~(10-1-03)T

02. Failure To Disclose Or Make Available Records. That has failed or refused to disclose, ~~or~~ make available, or provide immediate access to the Department, or its authorized agent, or any licensing board, any records maintained by the provider or required of the provider to be maintained, which the Department deems relevant to determining the appropriateness of payment. ~~(4-5-00)~~(10-1-03)T

03. Other Exclusions. For any reason for which the Secretary of Health and Human Services, or his designee, could exclude an individual or entity. (3-30-01)

216. AGGRAVATING FACTORS.

For purposes of lengthening the period of mandatory exclusions and permissive exclusions from the Medicaid Program, the following factors may be considered. This is not intended to be an exhaustive list of factors which may be considered: ~~(4-5-00)~~(10-1-03)T

01. Financial Loss. The acts resulted in financial loss to the program of one thousand five hundred dollars (\$1,500) or more. The entire amount of financial loss to such program will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made to the program. (4-5-00)

02. Time Acts Were Committed. The acts were committed over a period of one (1) year or more. (4-5-00)

03. Adverse Impact. The acts had a significant adverse physical, mental or financial impact on one (1) or more program recipients or other individuals. (4-5-00)

04. Length Of Sentence. The length of any sentence imposed by the court related to the same act. (4-5-00)

05. Prior Record. The excluded person has a prior criminal, civil or administrative sanction record. (4-5-00)

217. REFUSAL TO ENTER INTO AN AGREEMENT.

The Department may refuse to enter into a provider agreement if the provider: (10-1-03)T

01. Convicted Of A Felony. ~~Has~~ Has been convicted of a felony under federal or state law; or (10-1-03)T

02. Committed An Offense Or Act Not In Best Interest Of Medicaid Recipients. Has committed an offense or act which the Department determines is inconsistent with the best interests of ~~the~~ Medicaid recipients; or (10-1-03)T

03. Failed To Repay. ~~Has~~ Has failed to repay the Department monies which had been previously determined to have been owed to the Department; ~~or~~ (4-5-00)(10-1-03)T

04. Investigation Pending. Has a pending investigation for program fraud or abuse; or (10-1-03)T

05. Terminated Provider Agreement. Was the managing employee, officer, or owner of an entity whose provider agreement was terminated under Section 211 of these rules. (10-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

224. APPEALS OF DEPARTMENT ACTION.

Any department action, may be appealed as a contested case ~~pursuant to~~ under the IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~Unless action is taken pursuant to Sections 208 or 209 of these rules, an appeal stays the action until the time to appeal the Department's final order has expired.~~ (4-5-00)(10-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0309

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 56-202, 56-203, 56-1003(1), 56-1004(1)(a), 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule making:

Medicare has recently changed the Ambulatory Surgical Center (ACS) reimbursement methodology. Since this change is not compatible with Idaho Medicaid's automated system (AIM), the Department has opted to continue using the current reimbursement methodology. Since Idaho Medicaid no longer uses the same reimbursement methodology as Medicare, the reference in rule to Medicare's methodology was deleted.

The text in the Section of rule governing Personal Care Services (PCS) was deleted completely and the entire Section was reorganized and rewritten in plain language. Substantive changes include: clarification that eligible participants under age twenty-one (21) who meet the medical necessity criteria under Early Periodic Screening, Diagnosis, and Treatment (EPSDT) may be eligible for up to twenty-four (24) hours a day of service delivery; and removal of the requirement that Personal Care Assistants be Certified Nursing Assistants (CNAs).

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted prior to the publication of the proposed because rule changes involve clarification and reorganization of rule but contain no changes in the business process. Rule changes regarding PCS were made in consultation with Medicaid's Personal Assistance Oversight Committee.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Sheila Pugatch at (208) 364-1817 (regarding ACS) or Christine Baylis at (208) 364-1891 (regarding PCS).

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 18th day of August, 2003.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0309

121. AMBULATORY SURGICAL CENTER.

The Department ~~will~~ must provide Ambulatory Surgical Centers (ASC) services for eligible ~~recipients~~ participants. ~~Reimbursement and covered medical procedures will be based on Medicare program coverage and payment principles.~~ (9-30-84)(____)

01. Facility Approval. The ASC must be surveyed by the Department's ~~Licensure and Certification Section~~ Bureau of Facility Standards as required by 42 CFR 416.25 through 416.49 and be approved by the U.S. Department of Health and Human Services for participation as a Medicare ASC provider. (9-30-84)(____)

02. Provider Agreement. Following Medicare program approval, the Department may enter into a provider agreement with an ASC. No Medicaid payment may be made to any ASC in the absence of such an agreement. Grounds for cancellation of the provider agreement ~~will~~ include, ~~but not be limited to:~~ (9-30-84)(____)

a. The loss of Medicare program approval ~~will constitute grounds for cancellation of the Department's provider agreement with the ASC.;~~ (9-30-84)(____)

b. Identification of any condition which threatens the health or safety of patients by the Department's ~~Licensure and Certification Section will constitute grounds for cancellation of the Department's provider agreement with the ASC~~ Bureau of Facility Standards. (9-30-84)(____)

03. Covered Surgical Procedures. Those surgical procedures identified by the Medicare program as appropriately and safely performed in an ASC will be reimbursed by the Department. In addition, the Department may add surgical procedures to the ~~listing~~ developed by the Medicare program as required by 42 CFR 416.65 if the procedures meet the criteria identified in 42 CFR 416.65 (a) and (b). (9-30-84)(____)

a. The Department will provide a list of approved procedures to all participating ASCs. (9-30-84)

b. Such lists will be updated by the Department as new procedures are approved by the Medicare program. All participating ASCs will be notified by the Department of such changes. (9-30-84)

04. Payment Methodology. ASC services reimbursement is designed to pay for use of facilities and supplies necessary to safely care for the patient. Such services are reimbursed as follows: (9-30-84)

a. ASC facility service payments represent reimbursement for the costs of goods and services recognized by the Medicare program as described in 42 CFR, Part 416. Payment levels will be determined by the Department. Any surgical procedure covered by the Department as described in Subsection 121.03 of this rule, but which is not covered by Medicare will have a reimbursement rate established by the Department. (5-25-93)(____)

b. ASC facility services ~~will~~ include, ~~but not be limited to,~~ the following: (9-30-84)(____)

i. Nursing, technician, and related services; ~~and~~ (9-30-84)(____)

ii. Use of ASC facilities; ~~and~~ (9-30-84)(____)

iii. Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures; ~~and~~ (9-30-84)(____)

~~and~~ **iv.** Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure; (9-30-84)(____)

v. Administration, record-keeping and housekeeping items and services; and (9-30-84)

- vi. Materials for anesthesia. (9-30-84)
- c. ASC facility services do not include the following services: (9-30-84)
 - i. Physician services; *and* (~~9-30-84~~)(____)
 - ii. Laboratory services, x-ray or diagnostic procedures (other than those directly related to the performance of the surgical procedure); *and* (~~9-30-84~~)(____)
 - iii. Prosthetic and orthotic devices; *and* (~~9-30-84~~)(____)
 - iv. Ambulance services; *and* (~~9-30-84~~)(____)
 - v. Durable medical equipment for use in the patient's home; and (9-30-84)
 - vi. Any other service not specified in Subsection 121.04.b. of this rule. (~~12-31-91~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~146. PERSONAL CARE SERVICES.~~

~~Pursuant to Sections 39-5601 through 39-5607, Idaho Code, it is the intention of the Department to provide personal care services to eligible participants in their personal residence in order to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage individual choice, and to maintain community integration. For a participant to be eligible for personal care services, the Department must find that the participant requires personal care services due to a medical condition which impairs their physical or mental function or independence and must find the participant capable of being maintained safely and effectively in their own home or residence with personal care services.~~ (~~3-30-01~~)

~~01. Care And Services Provided.~~ (~~1-1-91~~)

~~**a.** Medically oriented tasks having to do with a participant's physical or functional requirements, as opposed to housekeeping or skilled nursing care, provided in the participant's home. Such services may include, but are not limited to:~~ (~~5-3-03~~)

~~i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care, but excluding the irrigation or suctioning of any body cavities which require sterile procedures and the application of dressings, involving prescription, medication, and aseptic techniques; and~~ (~~1-1-91~~)

~~ii. Assistance with bladder or bowel requirements which may include helping the participant to and from the bathroom or assisting the participant with bedpan routines, but excluding insertion or sterile irrigation of catheters; and~~ (~~5-3-03~~)

~~iii. Assisting the participant with medications which are ordinarily self-administered, when ordered by a physician, but excluding the giving of injections or fluids into the veins, muscles, or skin, or administering of medicine; and~~ (~~5-3-03~~)

~~iv. Assistance with food, nutrition, and diet activities to include the preparation of meals if incidental to medical need, as determined by a physician; and~~ (~~7-15-83~~)

~~v. The continuation of active treatment training programs in the home setting to increase or maintain independence for the developmentally disabled participant.~~ (~~5-3-03~~)

~~vi. Non-nasogastric gastrostomy tube feedings may be performed if authorized prior to~~

~~implementation by the Department's Regional Medicaid Unit and if the following requirements are met: (2-19-92)~~

- ~~(1) The task is non-complex and can be safely performed in the given participant care situation; and (5-3-03)~~
- ~~(2) A registered nurse has assessed the participant's nursing care needs and has developed a written standardized procedure for gastrostomy tube feedings, which is individualized for the participant's characteristics and needs; and (5-3-03)~~
- ~~(3) Persons to whom the procedure can be delegated are identified by name. The registered nurse must provide proper instruction in the performance of the procedure, supervise a return demonstration of safe performance of the procedure, state in writing strengths and weaknesses of the person performing the procedure, and evaluate the performance of the procedure at least monthly; and (2-19-92)~~
- ~~(4) Any change in the participant's status or problem relative to the procedure must be reported immediately to the registered nurse; and (5-3-03)~~
- ~~(5) The individualized procedure, the supervised performance of the procedure, and follow up evaluation of the performance of the procedure must be documented in writing by the supervising RN, and must be readily available for review, preferably with the participant's record. (5-3-03)~~
- ~~(6) Medication previously received could be given by the personal care provider through the non-nasogastric tube unless contraindicated. (2-19-92)~~
- ~~vii. In addition to performing at least one (1) of the services listed in Subsections 146.01.a.i. through 146.01.a.vi., the provider may also perform the following services: (2-19-92)~~
 - ~~(1) Such incidental housekeeping services essential to a participant's comfort and health, to include the changing of bed linens, rearranging furniture to enable the participant to move about more easily, laundry and room cleaning when incidental to the participant's treatment. Excluded are cleaning and laundry for any other occupant of the participant's residence; and (5-3-03)~~
 - ~~(2) Accompanying the participant to clinics, physician office visits, or other trips which are reasonable for the purpose of obtaining medical diagnosis or treatment; and (5-3-03)~~
 - ~~(3) Shopping for groceries or other household items required specifically for the health and maintenance of the participant. (5-3-03)~~
- ~~**b.** Service Limitations. The maximum amount of personal care services available to an eligible participant is as follows: (3-30-01)~~
 - ~~i. For adults receiving services under the State Medicaid Plan option, service delivery is limited to a maximum of sixteen (16) hours per week per participant. (3-30-01)~~
 - ~~ii. For individuals under the age of eighteen (18) who meet medical necessity criteria under EPSDT, the eligible participant may receive up to twenty-four (24) hours per day of service delivery under the State Plan option. (3-30-01)~~
- ~~**02. Place Of Service Delivery.** Personal Care Services (PCS) may be provided only in a participant's personal residence. The following living situations are specifically excluded as a personal residence for the purpose of these rules: (3-30-01)~~
 - ~~**a.** Certified nursing facilities (NF) or hospitals; and (1-1-91)~~
 - ~~**b.** Licensed Intermediate Care Facility for the Mentally Retarded; and (7-15-83)~~
 - ~~**c.** Intensive Treatment Facility For Children as described in IDAPA 16.06.01, "Rules Governing~~

- ~~Family and Children's Services," Section 620. (4-5-00)~~
- ~~d. A home receiving payment for specialized foster care, professional foster care, or group foster care. (4-5-00)~~
- ~~03. Services Delivered Following A Written Plan. (7-15-83)~~
- ~~a. All PCS are provided based on a written plan of care which is the responsibility of the Personal Assistance Agency and the participant to prepare and is based on: (3-30-01)~~
- ~~i. The physician's or authorized provider's information including the orders; and (3-30-01)~~
- ~~ii. The nurse's or QMRP's assessment and observations of the participant; and (5-3-03)~~
- ~~iii. Information elicited from the participant. (3-30-01)~~
- ~~b. The plan of care must include all aspects of personal care necessary to be performed by the PCS provider, including the amount, type, and frequency of such services. (7-15-83)~~
- ~~e. The plan of care will be signed and approved by the physician or authorized provider, prior to the initiation of the services by the PCS provider. (3-30-01)~~
- ~~d. The plan must be revised and updated based upon treatment results or a participant's changing profile of needs as necessary, but at least annually. (5-3-03)~~
- ~~04. Physician/Authorized Provider Supervision Of The Service. All Personal Care Services are provided under the order of a licensed physician or authorized provider. The physician or authorized provider must: (3-30-01)~~
- ~~a. Certify, in writing, that the services are medically necessary. (3-30-01)~~
- ~~b. Order all services delivered by the PCS provider. Such orders are signed and dated by the physician or authorized provider and include, at a minimum, his signature and date of approval on the participant's plan of care. (3-30-01)~~
- ~~e. Update the plan of care, including his signature and date of approval, as necessary, but at least annually. (1-1-91)~~
- ~~d. Recommend institutional placement of the participant if he identifies that PCS, in combination with other community resources, are no longer sufficient to ensure the health or safety of the participant. (3-30-01)~~
- ~~05. Service Supervision. (1-1-91)~~
- ~~a. A registered nurse or a QMRP who is not functioning as the personal care provider may oversee the delivery of PCS. The need for such oversight will be identified by the RMU, and when received will include: (3-30-01)~~
- ~~i. In conjunction with the PAA and attending physician or authorized provider or the RMU or its contractor the development of a plan of care for the participant; and (3-30-01)~~
- ~~ii. Review of the treatment given by the personal care provider through a review of the participant's PCS record as maintained by the provider and on-site interviews with the participant at least every ninety (90) days; and (5-3-03)~~
- ~~iii. Reevaluation of the plan of care as necessary and obtaining physician or authorized provider approval on all changes. The entire plan is reviewed at least annually; and (3-30-01)~~

~~iv. Immediate notification of the physician or authorized provider of any significant changes in the participant's physical condition or response to the service delivery; and (3-30-01)~~

~~v. Provides an on-site visit to the participant to evaluate changes of condition when requested by the PCS provider, QMRP supervisor, PAA, case manager, or participant. (3-30-01)~~

~~b. In addition to, or instead of the supervisory visit by the registered nurse, all clients who are developmentally disabled, other than those with only a physical disability, as determined by the Regional Medicaid Unit may receive oversight of service delivery by a Qualified Mental Retardation Professional (QMRP) as defined in 42 CFR 483.430. Such oversight will include: (3-30-01)~~

~~i. In conjunction with the attending physician or authorized provider, the QMRP may assist in the development of the plan of care for the participant for those aspects of active treatment which are provided in the home by the PCS attendant. (3-30-01)~~

~~ii. Review of the care and/or training given by the personal care provider through a review of the participant's PCS record as maintained by the provider, and on-site interviews with the participant at least every ninety (90) days. (5-3-03)~~

~~iii. Reevaluation of the plan of care as necessary, but at least annually. (1-1-91)~~

~~iv. An on-site visit to the participant to evaluate any change of condition when requested by the PCS provider, PAA, nurse supervisor, case manager, or participant. (3-30-01)~~

~~**06. PCS Provider Qualifications. (1-1-91)**~~

~~a. Persons providing PCS: Individuals may provide PCS either as personal assistance agency employees, or employees of record of a personal assistance agency functioning as a fiscal intermediary (FI), if they have at least one (1) of the following qualifications: (3-30-01)~~

~~i. Registered Nurse, RN: A person currently licensed by the Idaho State Board of Nursing as a registered nurse; or (7-15-83)~~

~~ii. Licensed Practical Nurse, L.P.N.: A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; or (7-15-83)~~

~~iii. Nursing Assistant: All nursing assistants who provide PCS to participants must appear on the Idaho State Board of Nursing's registry of certified nurse aides (CNA) or other training program approved by the Department. An individual who has completed a certified nurse aide training program may be granted provisional provider status for up to ninety (90) days by the Department to allow for the completion of competency testing and registry. (5-3-03)~~

~~iv. Specially Qualified Assistant: A person who has documented training to meet the needs of a specific individual by a personal assistance agency, the participant, or the participant's family. Such training must be provided before services are delivered or reimbursed by Medicaid. (3-30-01)~~

~~b. All persons who care for participants with a developmental disability other than those with only physical disabilities as identified by the Department's RMU will, in addition to the completion of the requirements of Subsection 146.06.a.iii., have completed one (1) of the Department approved developmental disabilities training courses, or have experience in working directly providing services to people with developmental disabilities. Providers who are qualified as QMRPs will be exempted from the Department approved developmental disabilities training course. Each region may grant temporary approval to an individual who meets all qualifications except for the required developmental disabilities training course or experience to become a PCS provider to a participant with developmental disability if all of the following conditions are met: (3-30-01)~~

~~i. The RMU has verified that there are no qualified providers reasonably available to provide services to the participant requesting services; and (5-3-03)~~

- ~~ii. The provider must be enrolled in the next available training course with a graduation date no later than six (6) months from the date of the request for temporary status; and (7-1-94)~~
- ~~iii. The supervising QMRP makes monthly visits until the provider graduates from the training program. (7-1-94)~~
- ~~e. Personal Assistance Agency providers must submit to the Department documentation of their worker's compensation and professional liability insurance coverage. In the case of worker's compensation, agencies will direct their sureties to provide a certificate of insurance to the Department. Termination of either type of insurance by the provider will be cause for termination of Provider status by the Department. Personal Assistance Agency providers will keep copies of employee health screens in their files for review by the Department as necessary. Providers' employees of fact or record will subject themselves to a criminal history check conducted by the Department. If no criminal history is indicated on the Self-Declaration form, individuals may be authorized by the Region to provide services on a provisional basis while awaiting the results of the fingerprinting process. Such authorization may be provided after the participant's safety is assured by the responsible Region. (5-3-03)~~
- ~~d. Individuals providing supervision to PCS attendants. (1-1-91)~~
- ~~i. RN supervisors will have a current Idaho professional nursing license (RN). (1-1-91)~~
- ~~ii. Qualified Mental Retardation Professional (QMRP) supervisors will be qualified by education and training as required in 42 CFR 483.430. (1-1-91)~~
- ~~e. Provider agency. A personal assistance agency which has a signed provider agreement with the Department and is capable of and responsible for all of the following: (3-30-01)~~
- ~~i. Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal care attendants and the assurance of quality service provided by the personal care attendants; and (1-1-91)~~
- ~~ii. Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; and (8-5-91)~~
- ~~iii. Maintenance of liability insurance coverage; and (1-1-91)~~
- ~~iv. Provision of a licensed professional nurse (RN) or, where applicable, a QMRP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; and (3-30-01)~~
- ~~v. Assignment of a qualified personal care attendant(s) to eligible participants after consultation with and approval of such participants; and (3-30-01)~~
- ~~vi. Assure that all PCS attendants meet the qualifications in Subsection 146.06.a.; and (12-31-91)~~
- ~~vii. Billing Medicaid for services approved and authorized by the RMU; and (1-1-91)~~
- ~~viii. Make referrals for PCS eligible participants for case management services when a need for such services is identified; and (3-30-01)~~
- ~~ix. Conduct such criminal background checks and health screens on new and existing employees as required in Subsection 146.10 and 146.11. (12-31-91)~~
- ~~f. Fiscal intermediaries services. Independent living services provided by an entity which has a signed Personal Assistance provider agency agreement with the Department and meets the requirements of Subsection 669.03. (3-30-01)~~
- ~~g. When care is provided in the provider's home, acquire the appropriate level of child foster or day care licensure or certification. The provider must be licensed as defined in Section 39-1213, Idaho Code, for care of~~

~~individuals under eighteen (18) years of age. Noncompliance with the above standards will be cause for termination of the provider's provider agreement. (3-30-01)~~

- ~~h. A PCS attendant cannot be a relative of any participant to whom the provider is supplying services. (3-30-01)~~
- ~~i. For the purposes of this subsection, a relative is defined as a spouse or a parent of a minor child. (1-1-91)~~
- ~~ii. Nothing in this subsection shall be construed to prohibit a relative from providing PCS where Medicaid is not the payment source for such services. (1-1-91)~~

~~**07. Participant Eligibility Determination.** An eligible participant may qualify for PCS coverage under the Idaho State Medicaid Plan. The participant must be financially eligible for MA as described in Idaho Department of Health and Welfare Rules, IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)". The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, in the assessment of the RMU, the participant could be maintained in their own home or residence and receive safe and effective services through the Personal Care Service Program. Eligible participants receiving PCS under the Idaho State Plan must have a completed UAI, medical justification, physician's or authorized provider's orders, and plan of care for such services. All services will be authorized by the RMU prior to payment for the amount and duration of services based on this information. (5-3-03)~~

~~**08. Case Redetermination.** (12-31-91)~~

~~**a.** Financial redetermination will be conducted pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)". Medical redetermination will be made at least annually by the RMU, or sooner at the request of the participant, the eligibility examiner, PAA, personal care provider, the supervising registered nurse, QMRP, the physician, or authorized provider. The sections cited implement and are in accordance with Idaho's approved state plan with the exception of deeming of income provisions. (5-3-03)~~

~~**b.** The redetermination process will assess the following factors: (7-15-83)~~

- ~~i. The participant's continued need for Personal Care Services; and (3-30-01)~~
- ~~ii. Discharge from Personal Care Services; and (3-30-01)~~
- ~~iii. Referral of the participant from Personal Care Services to a nursing facility. (5-3-03)~~

~~**09. Criminal History Check.** All personal care providers (case managers, RN supervisors, QMRP supervisors and personal care attendants) shall participate in a criminal history check as required by Section 39-5604, Idaho Code. The criminal history check will be conducted in accordance with IDAPA 16, Title 05, Chapter 06, "Rules Governing Mandatory Criminal History Checks". (10-1-94)~~

~~**10. Health Screen.** The Department will require that a health questionnaire be completed by each personal assistance agency employee who serves as a personal care attendant. Personal assistance agencies will retain this in their personnel file. If the applicant indicates on the questionnaire that he has a medical problem, the individual will be required to submit a statement from a physician or authorized provider that his medical condition would not prevent him from performing all the duties required of a personal care provider. Misrepresentation of information submitted on the health screen is cause for termination of employment for agency employees. (3-30-01)~~

~~**11. PCS Record.** Three (3) types of record information will be maintained on all participants receiving PCS and are considered to be the PCS record. (3-30-01)~~

~~**a.** Personal Care Provider Information. Each provider will maintain a written documentation of each visit made to a participant, and will record at a minimum the following information: (5-3-03)~~

- ~~i. Date and time of visit; and (1-1-91)~~
- ~~ii. Services provided during the visit; and (1-1-91)~~
- ~~iii. A statement of the participant's response to the service, including any changes noted in the participant's condition; and (3-30-01)~~
- ~~iv. Length of visit and unless it is determined by the RMU that the participant is unable to do so, the record of service delivery should be verified by the participant as evidenced by their signature on the service record; and (3-30-01)~~
- ~~v. Any changes in the treatment plan authorized by the referring physician, authorized provider or supervising registered nurse or QMRP as the result of changes in the participant's condition. (3-30-01)~~
- ~~vi. A copy of the information contained in Subsections 146.13.a.i. through 146.13.a.v., will be maintained in the participant's home unless authorized to be kept elsewhere by the RMU. Failure to maintain such documentation may result in the recoupment of funds paid for undocumented services. (3-30-01)~~
- ~~**b. Plan of Care.** The plan of care which is initiated by the attending physician or authorized provider, developed by the supervising RN or QMRP, must specify diagnosis, general treatment and the Personal Care Services which are required by the participant. The plan will contain all elements required by Subsection 146.03 and a copy of the most current plan of care will be maintained in the participant's home and will be available to the PCS Attendant, Supervising RN, QMRP and, if applicable, the case manager. (3-30-01)~~
- ~~**e. Oversight Information.** In addition to the plan of care, at least every ninety (90) days the Supervising RN or the QMRP may verify, in writing, that the services provided were consistent with the treatment plan. Any changes in the treatment plan will be documented and include the signature of the Supervising RN or QMRP. (5-3-03)~~
- ~~**12. Provider Responsibility For Notification.** It is the responsibility of the PAA to notify either the RMU and physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the PAA record. (5-3-03)~~
- ~~**13. Records Maintenance.** In order to provide continuity of services, when a participant is transferred among providers, all of the foregoing participant's records will be delivered to and held by the field office of the Department until a replacement provider assumes the case. PAAs will be responsible to retain their participants' records for five (5) years following the date of service. (5-3-03)~~
- ~~**14. Provider Coverage Limitations.** (4-5-00)~~
- ~~**a.** In congregate living situations, payment is limited to one (1) claim per provider act. In no case may more time be billed than was actually spent by the provider in service delivery. (4-5-00)~~
- ~~**b.** No provider may serve more than two (2) children who are authorized for eight (8) or more hours of care per day. (3-30-01)~~
- ~~**15. Community Awareness Program.** The Department will establish and maintain a community awareness program that will educate Idaho citizens regarding the purpose and function of all long-term care alternatives including, but not limited to, personal assistance services and individual participant rights. This program will be developed in cooperation with other state agencies including, but not limited to, the Commission On Aging and the State Independent Living Council. (3-30-01)~~

146. PERSONAL CARE SERVICES (PCS).

Under Sections 39-5601 through 39-5607, Idaho Code, it is the intent of the Department to provide personal care services (PCS) to eligible participants in their own homes or personal residences to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance quality of life, to encourage

individual choice, and to maintain community integration. ()

01. Personal Assistance Agency (PAA). A Personal Assistance Agency is an organization that has signed the Medicaid Provider General Agreement and the Additional Terms-Personal Assistance Agencies, Aged and Disabled Waiver Provider Agreement with the Department. The PAA agrees to comply with all conditions within the agreements. A Personal Assistance Agency may also provide fiscal intermediary services as defined in Section 669 of these rules. Each Personal Assistance Agency must direct, control, and monitor the work of each of its personal assistants. A Personal Assistance Agency must be capable of and is responsible for all of the following, no matter how the PAA is organized or the form of the business entity it has chosen: ()

a. Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal assistants and the assurance that all providers are qualified to provide quality service; ()

b. Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; ()

c. Maintenance of liability insurance coverage. Termination of either worker's compensation or professional liability insurance by the provider is cause for termination of the provider's provider agreement; ()

d. Provision of a licensed professional nurse (RN) or, where applicable, a QMRP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; ()

e. Assignment of qualified personal assistants to eligible participants after consultation with and approval by the participants; ()

f. Assuring that all personal assistants meet the qualifications in Subsection 146.09 of these rules; ()

g. Billing Medicaid for services approved and authorized by the RMS; ()

h. Making referrals for PCS-eligible participants for case management services when a need for these services is identified; and ()

i. Assuring that it provides quality services in compliance with applicable rules. Results of quality assurance reviews conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. The provider must respond within forty-five (45) days after the results are received. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. ()

02. Participant Eligibility Determination. The participant's eligibility for PCS must be redetermined at least annually under Subsection 146.10 of these rules. ()

a. Financial Eligibility. The participant must be financially eligible for Medical Assistance (MA) under IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children" or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled". ()

b. Medical Eligibility. All PCS must be provided under the order of a licensed physician or authorized provider. The physician or authorized provider must: ()

i. Certify in writing that the services are medically necessary; ()

ii. Recommend institutional placement of the participant if he identifies that PCS, in combination with other community resources or services offered through the Home and Community Based Waivers, are no longer sufficient to ensure the health or safety of the participant. ()

c. Other Eligibility Requirements. Regional Medicaid Services (RMS) will prior authorize payment for the amount and duration of all services when all of the following conditions are met: ()

i. The RMS finds that the participant is capable of being maintained safely and effectively in his own home or personal residence using PCS; ()

ii. The participant is an adult for whom a Uniform Assessment Instrument (UAI) has been completed. A UAI is not to be completed for a child participant; ()

iii. The RMS reviews the documentation for medical necessity; ()

iv. The participant has a plan of care; and ()

v. Services are ordered by a physician or authorized provider. ()

d. State Plan Option. A participant who receives MA is eligible for PCS under the State Medicaid Plan option if the Department finds he requires PCS due to a medical condition that impairs his physical or mental function or independence. ()

03. Service Limitations. ()

a. Adults who receive PCS under the State Medicaid Plan option are limited to a maximum of sixteen (16) hours per week per participant. ()

b. Children who meet the necessity criteria for EPSDT services under Section 536 of these rules may receive up to twenty-four (24) hours of PCS per day per child through the month of their twenty-first birthday.()

04. Medical Care And Services Provided. PCS services include medically-oriented tasks related to a participant's physical or functional requirements, as opposed to housekeeping or skilled nursing care, provided in the participant's home or personal residence. The provider must deliver at least one (1) of the following services: ()

a. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; ()

b. Assistance with bladder or bowel requirements that may include helping the participant to and from the bathroom or assisting the participant with bedpan routines; ()

c. Assisting the participant with physician-ordered medications that are ordinarily self-administered, such as opening the packaging or reminding the participant to take medications; ()

d. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; ()

e. The continuation of active treatment training programs in the home setting to increase or maintain participant independence for the developmentally disabled participant; ()

f. Non-nasogastric gastrostomy tube feedings if authorized by RMS prior to implementation and if the following requirements are met: ()

i. The task is not complex and can be safely performed in the given participant care situation; ()

ii. A Licensed Professional Nurse (RN) has assessed the participant's nursing care needs and has developed a written standardized procedure for gastrostomy tube feedings, individualized for the participant's characteristics and needs; ()

iii. Individuals to whom the procedure can be delegated are identified by name. The RN must provide proper instruction in the performance of the procedure, supervise a return demonstration of safe performance of the procedure, state in writing the strengths and weaknesses of the individual performing the procedure, and evaluate the performance of the procedure at least monthly; ()

iv. Any change in the participant's status or problem related to the procedure must be reported immediately to the RN; ()

v. The individualized procedure, the supervised performance of the procedure, and follow-up evaluation of the performance of the procedure must be documented in writing by the supervising RN and must be readily available for review, preferably with the participant's record; and ()

vi. Routine medication may be given by the personal assistant through the non-nasogastric tube if authorized by the supervising RN. ()

g. The provider is excluded from delivering the following services: ()

i. Irrigation or suctioning of any body cavities that require sterile procedures or the application of dressings involving prescription medication and aseptic techniques; ()

ii. Insertion or sterile irrigation of catheters; ()

iii. Injecting fluids into the veins, muscles or skin; and ()

iv. Administering medication. ()

05. Non-Medical Care And Services Provided. PCS services may also include non-medical tasks. In addition to performing at least one (1) of the services listed in Subsections 146.04.a. through 146.04.f. of this rule, the provider may also perform the following services: ()

a. Incidental housekeeping services essential to the participant's comfort and health, including changing bed linens, rearranging furniture to enable the participant to move around more easily, laundry, and room cleaning incidental to the participant's treatment. Cleaning and laundry for any other occupant of the participant's residence are excluded. ()

b. Accompanying the participant to clinics, physicians' office visits or other trips that are reasonable for the purpose of medical diagnosis or treatment. ()

c. Shopping for groceries or other household items specifically required for the health and maintenance of the participant. ()

06. Place Of Service Delivery. PCS may be provided only in the participant's own home or personal residence. The participant's personal residence may be a Certified Family Home (CFH) or a licensed Residential or Assisted Living Facility. The following living situations are specifically excluded as a personal residence: ()

a. Certified nursing facilities (NFs) or hospitals. ()

b. Licensed Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). ()

c. A home that receives payment for specialized foster care, professional foster care or group foster care, as described in IDAPA 16.06.01, "Rules Governing Family and Children's Services". ()

07. Service Delivery Based On Plan Of Care Or NSA. All PCS services are provided based on a written plan of care or a negotiated service agreement (NSA). The requirements for the NSA for participants in Residential or Assisted Living Facilities are described in IDAPA 16.03.22, "Rules for Licensed Residential or Assisted Living Facilities in Idaho". The requirements for the NSA for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes". The Personal Assistance Agency and the participant who lives in his own home are responsible to prepare the plan of care. ()

a. The plan of care for participants who live in their own homes is based on: ()

- i. The physician's or authorized provider's information, including their orders for service: ()
- ii. The results of the UAI for adults, the Personal Assistance Agency's assessment for children and, if applicable, the QMRP's assessment and observations of the participant; and ()
- iii. Information obtained from the participant. ()

b. The plan of care must include all aspects of medical and non-medical care that the provider needs to perform, including the amount, type and frequency of necessary services. ()

c. The plan of care must be revised and updated based upon treatment results or a change(s) in the participant's needs, or both, but at least annually. ()

08. Service Supervision. The delivery of PCS may be overseen by a licensed professional nurse (RN) or Qualified Mental Retardation Provider (QMRP). The RMS must identify the need for supervision. ()

a. Oversight must include all of the following: ()

- i. Assistance in the development of the written plan of care: ()
- ii. Review of the treatment given by the personal assistant through a review of the participant's PCS record as maintained by the provider; ()
- iii. Reevaluation of the plan of care as necessary; and ()
- iv. Immediate notification of the guardian, emergency contact, or family members of any significant changes in the participant's physical condition or response to the services delivered. ()

b. All participants who are developmentally disabled, other than those with only a physical disability as determined by the RMS, may receive oversight by a QMRP as defined in 42 CFR 483.430. Oversight must include: ()

- i. Assistance in the development of the plan of care for those aspects of active treatment which are provided in the participant's personal residence by the personal assistant; ()
- ii. Review of the care or training programs given by the personal assistant through a review of the participant's PCS record as maintained by the provider and through on-site interviews with the participant; ()
- iii. Reevaluation of the plan of care as necessary, but at least annually; and ()
- iv. An on-site visit to the participant to evaluate any change of condition when requested by the personal assistant, the Personal Assistance Agency, the nurse supervisor, the service coordinator or the participant. ()

09. Provider Qualifications For Personal Assistants. ()

a. All personal assistants must have at least one (1) of the following qualifications: ()

- i. Licensed Professional Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed professional nurse; ()
- ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; or ()
- iii. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services. The assistant must be at least age eighteen (18) years of age. The RMS may require a certified nursing assistant (CNA) if, in their professional judgment, the participant's medical

condition warrants a CNA. ()

b. In the case where care is provided in the participant's own home, and the participant has a developmental disability that is not physical only and requires more than physical assistance, all those who provide care must have completed one (1) of the Department-approved developmental disabilities training courses, or have experience providing direct services to people with developmental disabilities. RMS determines whether developmental disability training is required. Providers who are qualified as QMRPs are exempted from the Department-approved developmental disabilities training course. ()

c. In order to serve a participant with a developmental disability, a region may temporarily approve a PCS provider who meets all qualifications except for the required training course or experience, if all the following conditions are met: ()

i. The RMS verifies that there are no other qualified providers available; ()

ii. The provider is enrolled in the next available training course with a graduation date no later than six (6) months from the date of the request for temporary provider status; and ()

iii. The supervising QMRP makes monthly visits until the provider graduates from the training program. ()

d. If PCS is paid for by Medicaid, a PCS service provider cannot be the spouse of any participant or be the parent of a participant if the participant is a minor child. ()

e. When care for a child is delivered in the provider's home, the provider must be licensed or certified for the appropriate level of child foster care or day care. The provider must be licensed for care of individuals under age eighteen (18), as defined in Section 39-1213, Idaho Code. Noncompliance with these standards is cause for termination of the provider's provider agreement. ()

f. When care for an adult is provided in a home owned or leased by the provider, the provider must be certified as a Certified Family Home under IDAPA 16.03.19, "Rules Governing Certified Family Homes". ()

10. Annual Eligibility Redetermination. ()

a. The annual financial eligibility redetermination must be conducted under IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children" or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled". RMS must make the medical eligibility redetermination. The redetermination can be completed more often than once each year at the request of the participant, the Self-Reliance Specialist, the Personal Assistance Agency, the personal assistant, the supervising RN, the QMRP, or the physician or authorized provider. ()

b. The medical redetermination must assess the following factors: ()

i. The participant's continued need for PCS; ()

ii. Discharge from PCS; and ()

iii. Referral of the participant from PCS to a nursing facility. ()

11. Criminal History Check. All PCS providers, including service coordinators, RN supervisors, QMRP supervisors and personal assistants, must participate in a criminal history check as required by Section 39-5604, Idaho Code. The criminal history check must be conducted in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ()

12. Health Screen. Each Personal Assistance Agency employee who serves as a personal assistant must complete a health questionnaire. Personal Assistance Agencies must retain the health questionnaire in their personnel files. If the personal assistant indicates on the questionnaire that he has a medical problem, he is required to

submit a statement from a physician or authorized provider that his medical condition does not prevent him from performing all the duties required of a personal care provider. Misrepresentation of information submitted on the health questionnaire may be cause for termination of employment for the personal assistant and would disqualify the employee to provide services to Medicaid participants. ()

13. PCS Record Requirement - Participant In His Own Home. The PCS record must be maintained on all participants who receive PCS in their own homes. ()

a. Written Requirements. The PCS provider must maintain written documentation of every visit made to the participant's home and must record the following minimum information: ()

i. Date and time of visit; ()

ii. Length of visit; ()

iii. Services provided during the visit; and ()

iv. Documentation of any changes noted in the participant's condition or any deviations from the plan of care. ()

b. Participant's Signature. The participant must sign the record of service delivery verifying that the services were delivered. The RMS may waive this requirement if it determines the participant is not able to verify the service delivery. ()

c. Plan of Care. The plan of care must contain all the elements required under Subsection 146.07 of these rules. ()

d. A copy of the information required in Subsections 146.13.a. through 146.13.d. of this rule must be maintained in the participant's home unless the RMS authorizes the information to be kept elsewhere. Failure to maintain this information may result in recovery of funds paid for undocumented services. ()

14. Participant In A Residential Or Assisted Living Facility. The PCS record requirements for participants in Residential or Assisted Living Facilities are described in IDAPA 16.03.22, "Rules for Licensed Residential or Assisted Living Facilities in Idaho". ()

15. Participant In A Certified Family Home. The PCs record requirements for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes". ()

16. Provider Responsibility For Notification. The Personal Assistance Agency is responsible to notify the RMS and physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. This notification must be documented in the Personal Assistance Agency record. ()

17. Provider Coverage Limitations. ()

a. The provider must not bill for more time than was actually spent in service delivery. ()

b. No provider home, regardless of the number of providers in the home, may serve more than two (2) children who are authorized for eight (8) or more hours of PCS per day. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0310

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules have effective dates of January 1, 2003 and November 1, 2003.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-1003(1), and 56-1004(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearings(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 15, 2003.

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 making:

The purpose of these rule changes is to reduce the administrative duplication that occurs between the Medicaid program and the Department of Education and to increase health care access, in the most cost-effective manner, for Medicaid-eligible children receiving services in schools. These rule changes build on existing educational requirements and rely on existing controls for managing service utilization.

These rule changes exempt schools from the lifetime cap for Intensive Behavioral Intervention (IBI) services, the requirement that IBI services be prior authorized, the referral requirements associated with the Healthy Connections program, and other limitations on services. In addition, changes eliminate references to the Procedural Guidelines given to school districts, but integrate the content of these guidelines into the rule. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) was eliminated as a school-based service. Finally, two (2) new sections of rules were added: one describes the eligibility requirements for Psychosocial Rehabilitation (PSR), developmental therapy, and IBI services; the other describes individual and group PSR services. Clarifications and corrections were made throughout the rule.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary in order to protect the public health, safety and welfare, and confer a benefit.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted over the last two (2) years by the Department of Health and Welfare through meetings of the School-based Services Task Force comprised of representatives from the Department of Education, Idaho's independent school districts and school district superintendents, special education administrators, Idaho Parents Unlimited (IPUL), and Department staff from the divisions of Medicaid and Family and Community Services (FACS).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 15th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0310

011. INCORPORATION BY REFERENCE.

The following ~~is~~ are incorporated by reference in this chapter of rules:

~~(3-15-02)~~(1-1-03)T

01. Travel Policies And Procedures Of The Idaho State Board Of Examiners. The text of “Idaho State Travel Policies and Procedures of the Idaho State Board of Examiners,” Appendices A and B, June 13, 2000,
~~(3-15-02)~~

02. Availability. The “~~Idaho Travel Policies and Procedures of the Idaho State Board of Examiners,~~” ~~can be found~~ is available at the Office of the State Controller, 700 W. State St., 5th Fl., Box 83720, Boise, Idaho 83720-0011 or on the Internet at <http://www.sco.state.id.us>.
~~(3-15-02)~~(1-1-03)T

03. Medicare Region D Durable Medical Equipment Regional Carrier DMERC Supplier Manual April 2001. The full text of the Medicare Region D DMERC Supplier Manual Chapters IX and X is available via the Internet at www.cignamedicare.com. A copy is also available at the Idaho State Supreme Court Law Library.
(3-15-02)

03. Idaho Special Education Manual, September 2001. The full text of the “Idaho Special Education Manual, September 2001” is available on the Internet at <http://www.sde.state.id.us/SpecialEd/manual/sped.asp>. A copy is also available at the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, Idaho 83720-0027.
(1-1-03)T

04. Idaho Infant Toddler Program Implementation Manual (Revised September 1999). The full text of the “Idaho Infant Toddler Program Implementation Manual,” revised September 1999, is available at the Department of Health and Welfare at 450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036. (1-1-03)T

05. SIB-R Comprehensive Manual. Scales of Independent Behavior - Revised Comprehensive Manual, 1996, Riverside Publishing Co, 425 Spring Lake Drive, Itasca, IL 60143-2079. A copy is available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702. (1-1-03)T

06. DSM-IV-TR. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (11-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

560. SCHOOL-BASED HEALTH-RELATED SERVICES PROVIDED BY IDAHO PUBLIC SCHOOL DISTRICTS ~~OR OTHER PUBLIC EDUCATIONAL AGENCIES~~ (AND THE IDAHO INFANT TODDLER PROGRAM UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)).

The Department will pay school districts, including charter schools and other public educational agencies the Idaho Infant Toddler Program, for covered rehabilitative and health-related services pursuant to under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program"; Services including medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code; which that have entered into a provider agreement with the Department. Medicaid payment is also contingent upon school districts following current procedural guidelines established by the Department of Health and Welfare, Division of Medicaid for health related services provided by school districts and other public educational agencies. Under the Individuals with Disabilities Act (IDEA), the Infant Toddler Program serves children from birth until their third birthday or until the beginning of the school year of their third birthday. Idaho public school districts provide services to students three (3) years of age through the semester of their twenty-first birthday. For children who are enrolled in the Infant Toddler Program, these rules apply only to services delivered by the Department or services delivered under a contractual agreement with the Idaho Infant Toddler Program, for which the Department will bill and reimburse the service provider. ~~(5-3-03)(1-1-03)T~~

561. RECIPIENT MEDICAID ELIGIBILITY.

To be eligible for medical assistance reimbursement for covered services, ~~a~~ school districts and the Infant Toddler Program must ensure the student shall is: ~~(4-5-00)(1-1-03)T~~

01. ~~Education Disability.~~ Be identified as having an educational disability pursuant to IDAPA 08.02.03, "Rules Governing Thoroughness," Subsection 100.09.b., Department of Education standards for the education of disabled students or, for children birth to three (3) years of age, being identified as needing early intervention services due to a developmental delay or disability in accordance with the eligibility criteria of the Idaho Infant Toddler Program; and Medicaid Eligible. Eligible for Medicaid and the service for which the school district or Infant Toddler Program is seeking reimbursement; ~~(4-5-00)(1-1-03)T~~

02. Individualized Education Program. Have a current Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) which indicates the need for one (1) or more medically necessary health related services; and lists all Medicaid reimbursable services for which the school district or agency is requesting reimbursement; and School Enrollment. Enrolled in an Idaho school district or the Idaho Infant Toddler Program; ~~(4-5-00)(1-1-03)T~~

03. Age. ~~Be less than~~ Twenty-two one (22 1) years of age; or younger and the semester in which his twenty-first birthday falls is not finished; ~~(4-5-00)(1-1-03)T~~

04. Medicaid Eligible. ~~Be eligible for Medicaid and the service for which the school district is seeking reimbursement;~~ Educational Disability. ~~(4-5-00)(1-1-03)T~~

a. Identified as having an educational disability under the Department of Education standards in IDAPA 08.02.03, "Rules Governing Thoroughness"; or ~~(1-1-03)T~~

b. A child from birth to three (3) years of age, who has been identified as needing early intervention services due to a developmental delay or disability under the eligibility criteria of the Idaho Infant Toddler Program; ~~(1-1-03)T~~

05. ~~School District Is Enrolled As A Provider~~ Individualized Education Program (IEP). ~~Be served by a school district or other public educational agency that is an enrolled medical assistance provider pursuant to these rules~~ Covered by a current Individualized Education Program (IEP), Individualized Family Service Plan (IFSP), or Services Plan (SP), developed within the previous three hundred sixty-five (365) days which indicates the need for one (1) or more medically necessary health-related services and lists all the Medicaid reimbursable services for which the school district or agency is requesting reimbursement; and ~~(4-5-00)(1-1-03)T~~

06. Referred By A Physician Or Other Practitioner Of The Healing Arts. ~~Have a recommendation or referral from~~ Recommended or referred by a physician or other practitioner of the healing arts such as a nurse practitioner, clinical nurse specialist, or physician's assistant, who is licensed and approved by the state of Idaho to

make such recommendations or referrals, for all Medicaid services for which the school district ~~or other educational agency~~ or Infant Toddler Program is receiving reimbursement. ~~(3-30-01)~~(1-1-03)T

562. SERVICE-SPECIFIC ELIGIBILITY.

In addition to meeting the Medicaid eligibility requirements in Section 561 of these rules, Psychosocial Rehabilitation (PSR), Developmental Therapy, and Intensive Behavioral Intervention (IBI) have additional eligibility requirements. (1-1-03)T

01. Psychosocial Rehabilitation (PSR). To be eligible for PSR, the student must meet the PSR eligibility criteria for children in Section 450 of these rules, or the Department of Education's criteria for emotional disturbance found in the Idaho Special Education Manual available online at: <http://www.sde.state.id.us/SpecialEd/manual/sped.asp>. Districts are to coordinate the delivery of services if the student is receiving PSR services authorized by the Department or its designee. (1-1-03)T

02. Developmental Therapy. To be eligible for development therapy, the student must meet the criteria for development disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the Developmental Disabilities Determination Checklist available online at: <http://www.sde.state.id.us/SpecialEd/medicaid>. (1-1-03)T

03. Intensive Behavioral Intervention (IBI). To be eligible for IBI services the student must: (1-1-03)T

a. Meet the criteria for developmental disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the Developmental Disabilities Determinations Checklist; and (1-1-03)T

b. Display self-injurious, aggressive or severely maladaptive behavior evidenced by a score of minus twenty-two (-22) or below on the Scales of Independent Behavior-Revised (SIB-R), and demonstrate functional abilities that are fifty percent (50%) or less of his chronological age in at least one (1) of the following: verbal or nonverbal communication, social interaction, or leisure and play skills. (1-1-03)T

5623. EVALUATION AND DIAGNOSTIC SERVICES.

~~Evaluations completed shall be recommended or referred by a physician or other practitioner of the healing arts, such as a nurse practitioner, clinical nurse specialist, or physician's assistant, who is licensed and approved by the state of Idaho to make such recommendations or referrals and shall; to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must:~~ ~~(4-5-00)~~(1-1-03)T

01. Recommended Or Referred By A Physician Or Other Practitioner of the Healing Arts. Be recommended or referred by a physician or other practitioner of the healing arts licensed and approved by the state of Idaho to make such recommendations or referrals; (1-1-03)T

02. Conducted By Qualified Professionals. Be conducted by qualified professionals for the respective discipline as defined in Section 569 of these rules; ~~and~~ ~~(4-5-00)~~(1-1-03)T

03. Directed Toward Diagnosis. Be directed toward a diagnosis ~~and recommendations for services;~~ ~~(4-5-00)~~(1-1-03)T
and

04. Recommend Interventions. Recommend interventions to address each need. (4-5-00)

5634. REIMBURSABLE SERVICES.

~~School districts and~~ ~~and~~ Infant Toddler ~~programs~~ may bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts; licensed and approved by the state of Idaho to make such recommendations or referrals for the Medicaid services for which the school district or other educational agency is seeking reimbursement. ~~(4-5-00)~~(1-1-03)T

01. Annual IEP, IFSP, Or SP (Plan) Development. A physician's referral is not required to bill for

~~the Annual IEP, or IFSP, or SP (plan) development. When the IEP team determines the student's need for health-related services, the meeting to develop the plan will be reimbursable. One (1) meeting per calendar year is reimbursable, even though the plan may be revised more frequently. School districts cannot bill separately for professionals attending the plan meeting. The plan must identify the type, frequency, duration, provider and location of each service for which it is seeking reimbursement.~~ (4-5-00)(1-1-03)T

02. Collateral Contact. Consultation or treatment direction about the student to a significant other in the student's life may be face-to-face or by telephone contact. ~~Collateral contact for general staff training, regularly scheduled parent-teacher conferences, general parent education, or for treatment team meetings, even when the parent is present, is not reimbursed.~~ (7-1-99)(1-1-03)T

03. Developmental Therapy And Evaluation ~~And Treatment.~~ ~~Assessment, treatment and instruction of the student in the acquisition of developmental milestones and activities of~~ Developmental therapy may be billed, including evaluation and instruction in daily living skills that the student has not gained at the normal developmental stages in his or her life, or is not likely to develop without training or therapy beyond age-appropriate learning situations. Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the student's disability. (7-1-99)(1-1-03)T

~~**04. Early Periodic Screening, Diagnosis, And Treatment (EPSDT) Services.** Services include age appropriate health history and health screening services.~~ (7-1-99)

~~**054. Medical Equipment And Supplies.** Includes ~~m~~Medical equipment and supplies that are covered under the Idaho Medicaid program must be ordered by a physician and prior authorized, based on medical necessity, in order to be billed. Authorized items must be used at school or for the Infant Toddler Program at the location where the service is provided. Equipment that is too large or unsanitary to transport from home to school may be covered if prior authorized. The equipment and supplies must be used for the student's exclusive use and transfer with the student if the student changes schools. Equipment no longer usable by the student, may be donated to the school by the student.~~ (7-1-99)(1-1-03)T

~~**065. Nursing Services.** Includes ~~s~~Skilled nursing services that must be provided by a licensed nurse, within the scope of his practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed.~~ (7-1-99)(1-1-03)T

~~**076. Occupational Therapy And Evaluation ~~And Treatment.~~** Does not include components of Occupational therapy that deals with and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed.~~ (7-1-99)(1-1-03)T

~~**087. Personal Care Services.** School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements such as basic personal care and grooming; assistance with bladder or bowel requirements; assistance with eating (including feeding); or other tasks delegated by a Registered licensed professional Nurse (RN).~~ (4-5-00)(1-1-03)T

~~**098. Physical Therapy And Evaluation ~~And Treatment.~~**~~ (7-1-99)(1-1-03)T

~~**109. Psychological Evaluation ~~And Therapy.~~**~~ (7-1-99)(1-1-03)T

10. Psychotherapy. (1-1-03)T

11. Psychosocial Rehabilitation (PSR) And Evaluation ~~And Treatment.~~ ~~Includes assistance~~ Psychosocial rehabilitation (PSR) and evaluation services to assist the student in gaining and utilizing skills necessary to participate in school such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills are reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. See Section 565 of these rules for a description of individual and group PSR services. (7-1-99)(1-1-03)T

12. Intensive Behavioral Intervention (IBI). Intensive ~~B~~behavioral ~~I~~nterventions are individualized, comprehensive, proven interventions used on a short term, one-to-one basis that produce measurable outcomes which

diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. ~~Intensive Behavioral Intervention~~ IBI is available only to children birth through ~~age twenty-one (21)~~ the last day of the month of their twenty-first birthday who have self-injurious, aggressive or severely maladaptive behavior and severe deficits in the areas of verbal and nonverbal communication; ~~or~~ social interaction; ~~or~~ leisure and play skills. ~~(4-5-00)~~(1-1-03)T

a. Parent and Staff Consultation. Professionals may provide consultation to parents and to other staff who provide therapy for the child in other disciplines to assure successful integration and transition from ~~Intensive Behavioral Intervention~~ IBI to other therapies and environments. ~~(5-3-03)~~(1-1-03)T

b. Prior Authorization. ~~Initial Intensive Behavioral Intervention services or consultation must be prior authorized by the Department. The school district/Infant Toddler Program must submit evidence of each child's eligibility for Intensive Behavioral Intervention, the Individual Education Plan listing the need for the service, the number of hours of service requested, and the measurable outcomes expected as the result of the intervention. Prior authorization for IBI services, when delivered by a school-based provider, will not be required beginning August 15, 2003.~~ Prior authorization for IBI services, when delivered by a school-based provider, will not be required beginning August 15, 2003. ~~(4-5-00)~~(1-1-03)T

~~**c.** Continuation of Prior Authorization. The school district/Infant Toddler Program must submit a report on the child's progress toward Intensive Behavioral Intervention outcomes to the Department every one hundred twenty (120) days and seek prior authorization for continuation or modification of services. On an annual basis, a multi-disciplinary treatment team that includes at a minimum, the parent(s), staff psychologist and staff providing services to the child, will review current evaluations and make a recommendation for continuation or modification of the intervention.~~ ~~(4-5-00)~~

13. Speech/Audiological Therapy And Evaluation ~~And Treatment~~. ~~(7-1-99)~~(1-1-03)T

14. Social History And Evaluation. (7-1-99)

15. Transportation Services. School districts ~~and~~ and Infant Toddler ~~P~~programs can receive reimbursement for mileage for transporting a student to and from home, school, or location of services when: ~~(4-5-00)~~(1-1-03)T

a. The student requires special transportation assistance such as a wheelchair lift, ~~or~~ an attendant, or both, when medically necessary for the health ~~and~~ and safety of the student and ordered by a physician; and ~~(7-1-99)~~(1-1-03)T

b. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; ~~and~~ ~~(4-5-00)~~(1-1-03)T

c. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; ~~and~~ ~~(7-1-99)~~(1-1-03)T

d. Both the Medicaid-covered service and the need for the special transportation are included on the student's ~~IEP or IFSP~~ plan; and ~~(7-1-99)~~(1-1-03)T

e. The mileage, as well as the services performed by the attendant, are documented. See Section 576 of these rules for documentation requirements. (1-1-03)T

16. Interpretive Services. Interpretive services ~~are those services~~ needed by a student who does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service: may be billed with the following limitations: ~~(7-1-99)~~(1-1-03)T

a. Payment for interpretive services ~~are~~ is limited to the specific time that the student is receiving the health-related service; ~~(7-1-99)~~(1-1-03)T

b. Both the Medicaid-covered service and the need for interpretive services ~~are~~ must be included on the student's IEP or IFSP plan; and (7-1-99)(1-1-03)T

c. Interpretive services ~~would be~~ are not be covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (7-1-99)(1-1-03)T

565. PSYCHOSOCIAL REHABILITATION (PSR) SERVICES DESCRIPTION.

Psychosocial rehabilitation (PSR) services are to prevent the placement of a student in a more restrictive educational situation. The two (2) types of PSR are individual and group services. (1-1-03)T

01. Individual PSR. Individual PSR includes one (1) or more of the following services: (1-1-03)T

a. Assistance in gaining and utilizing skills necessary to undertake school, employment, or independence. This includes helping the student learn personal hygiene and grooming, selecting and acquiring appropriate clothing, time management, and other skills related to the student's psychosocial circumstances; (1-1-03)T

b. Ongoing on-site assessment, evaluation, and feedback sessions, including one hundred twenty (120) day reviews, to identify symptoms or behaviors and to develop interventions with the student and employer or teacher. The progress report may be used to satisfy this requirement; (1-1-03)T

c. Individual interventions in social skill training to improve communication skills and facilitate appropriate interpersonal behavior directly related to the student's emotional disturbance; (1-1-03)T

d. Problem solving, support and supervision related to activities of daily living to assist the student to gain and utilize skills such as personal hygiene, household tasks, use of transportation, and money management; (1-1-03)T

e. Development of coping skills and symptom management to identify the symptoms of emotional disturbance that are barriers to successful community integration and crisis prevention. (1-1-03)T

02. Group PSR. Group PSR must be provided in accordance with the goals, objectives, and benchmarks specified on the plan. This is a service provided to two (2) or more students, at least one (1) of whom is a Medicaid participant. The purpose of the service is to aid students in work, school, or other activities related to their emotional disturbance in obtaining skills to live independently or in preventing movement to a more restrictive educational situation. Group PSR must include one (1) or more of the following: (1-1-03)T

a. Employment or school-related groups to focus on symptom management on the job or in school, symptom reduction, and education about appropriate job- or school-related behaviors; (1-1-03)T

b. Communication and interpersonal skills groups, the goals of which are to improve communication skills and facilitate appropriate interpersonal behavior; (1-1-03)T

c. Symptom management groups to identify symptoms of emotional disturbance that are barriers to successful community integration, crisis prevention, problem identification and resolution, coping skills, developing support systems and planning interventions with teachers, employers, family members, and other support persons; and (1-1-03)T

d. Activities of daily living groups which help students learn skills related to personal hygiene, grooming, household tasks, use of transportation, socialization and money management. (1-1-03)T

5646. -- 567. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

569. PROVIDER STAFF QUALIFICATIONS.

Medicaid will only reimburse for services provided by qualified staff. See Section 574 of these rules for the limitations and requirements for paraprofessional service providers. The following are the minimum qualifications for professional providers of covered services: ~~(4-5-00)(1-1-03)T~~

01. ~~Annual IEP, Or IFSP, Or SP Plan Development.~~ ~~Must include the professionals who completed the evaluations and recommendations for IEP or IFSP services.~~ The IEP, IFSP, or SP (plan) must be developed in accordance with the Idaho Special Education Manual or the Infant Toddler Program Implementation Manual. Plan development ~~May~~ only be billed when the ~~IEP or IFSP plan~~ includes reimbursable health-related services. ~~(7-1-99)(1-1-03)T~~

02. Collateral Contact. Contact and direction must be provided by ~~a~~ the professional who provides the treatment to the student. ~~(4-5-00)(1-1-03)T~~

03. Developmental Therapy And Evaluation ~~And Treatment~~. Must be provided by or under the direction of a developmental specialist, as set forth in IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies". ~~(5-3-03)(1-1-03)T~~

04. ~~EPSDT Screens.~~ ~~May be provided by a physician, physician extender (nurse practitioner, clinical nurse specialist, or physician's assistant), or EPSDT RN screener.~~ ~~(4-5-00)~~

054. Medical Equipment And Supplies. See Section 564 of these rules. ~~(4-5-00)(1-1-03)T~~

065. Nursing Services. Must be provided by a licensed professional nurse (RN) or licensed practical nurse (LPN) licensed to practice in Idaho. (4-5-00)

076. Occupational Therapy And Evaluation ~~And Treatment~~. Must be provided by or under the supervision of an individual qualified and registered to practice in Idaho. ~~(7-1-99)(1-1-03)T~~

087. Personal Care Services. Must be provided by ~~a~~ nurses aide (CNA) certified by the State of Idaho or under the direction of, a licensed professional nurse (RN) or licensed practical nurse (LPN), licensed by the State of Idaho. When services are provided by a CNA, the CNA must be supervised by an RN. Medically-oriented services having to do with the student's physical or functional requirements, such as basic personal care and grooming, assistance with bladder or bowel requirements, and assistance with eating (including feeding), must be identified on the plan of care and may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". ~~(4-5-00)(1-1-03)T~~

098. Physical Therapy And Evaluation ~~And Treatment~~. Must be provided by an individual qualified and ~~registered~~ licensed to practice in Idaho. ~~(7-1-99)(1-1-03)T~~

~~109.~~ Psychological ~~Therapy~~ Evaluation ~~And Treatment~~. Must be provided by a: ~~(7-1-99)(1-1-03)T~~

a. ~~A~~ Licensed psychiatrist; ~~(7-1-99)(1-1-03)T~~

b. Licensed physician; (7-1-99)

c. Licensed psychologist; (5-3-03)

d. Psychologist extender registered with the ~~Board~~ Bureau of Occupational Licenses; or ~~(7-1-99)(1-1-03)T~~

~~e.~~ Certified psychiatric nurse; ~~(7-1-99)~~

~~fe.~~ Certified school psychologist; (7-1-99)

- ~~g.~~ Licensed clinical professional counselor; or (5-3-03)
- ~~h.~~ Licensed masters social worker or licensed clinical social worker. (5-3-03)
- 10. Psychotherapy.** Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (11-1-03)T
- a.** Psychiatrist, M.D.; (11-1-03)T
- b.** Physician, M.D.; (11-1-03)T
- c.** Licensed psychologist; (11-1-03)T
- d.** Licensed clinical social worker; (11-1-03)T
- e.** Licensed clinical professional counselor; (11-1-03)T
- f.** Licensed marriage and family therapist; (11-1-03)T
- g.** Certified psychiatric nurse (R.N.), as described in Section 456 of this chapter of rules; (11-1-03)T
- h.** Licensed professional counselor whose provision of psychotherapy is supervised by persons qualified under Subsections 569.10.a. through 569.10.g. of this rule; (11-1-03)T
- i.** Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or (11-1-03)T
- j.** Psychologist extender registered with the Bureau of Occupational Licenses. (11-1-03)T
- 11. Psychosocial Rehabilitation.** Must be provided by a: (~~7-1-99~~)(11-1-03)T
- a.** ~~A~~Licensed physician or psychiatrist; (~~7-1-99~~)(11-1-03)T
- b.** Licensed ~~physician~~ master's level psychiatric nurse; (~~7-1-99~~)(11-1-03)T
- c.** Licensed psychologist; (7-1-99)
- d.** ~~Psychologist extender registered with the Board of Occupational Licenses~~ Licensed clinical professional counselor or professional counselor; (~~7-1-99~~)(11-1-03)T
- e.** ~~Certified psychiatric nurse~~ Licensed marriage and family therapist; (~~7-1-99~~)(11-1-03)T
- f.** ~~Certified school psychologist~~ Licensed masters social worker, clinical social worker, or social worker; (~~7-1-99~~)(11-1-03)T
- g.** ~~Licensed clinical professional counselor~~ Psychologist extender registered with the Bureau of Occupational Licenses; (~~5-3-03~~)(11-1-03)T
- h.** ~~Licensed social worker, licensed masters social worker or licensed clinical social worker~~ Clinician; (~~5-3-03~~)(11-1-03)T
- i.** ~~Psychosocial rehabilitation specialist as defined in Section 455 of these rules.~~ Licensed pastoral counselor; (~~5-3-03~~)(11-1-03)T
- j.** Licensed professional nurse (RN); (11-1-03)T

- k.** Psychosocial rehabilitation specialist as defined in Section 456 of this chapter of rules: (11-1-03)T
- l.** Licensed occupational therapist: (11-1-03)T
- m.** Certified school psychologist; or (11-1-03)T
- n.** Certified school social worker. (11-1-03)T
- 12. Intensive Behavioral Intervention.** Must be provided by or under the direction of a qualified professional who meets the requirements set forth in IDAPA 16.04.11 "Rules Governing Developmental Disabilities Agencies," Section 809, "Qualifications to Provide Intensive Behavioral Intervention". (5-3-03)
- 13. Speech/Audiological Therapy And Evaluation~~And Treatment~~.** Must be provided by or under the direction of a speech pathologist or audiologist who possesses a certificate of clinical competence from the American Speech, Language and Hearing Association (ASHA); or who will be eligible for certification within one (1) year of employment. Personnel records must reflect the expected date of certification. ~~(4-5-00)~~(1-1-03)T
- 14. Social History And Evaluation.** Must be provided by a ~~registered~~ licensed professional nurse; (RN), psychologist, M.D., school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. ~~(4-5-00)~~(1-1-03)T
- 15. Transportation.** Must be provided by an individual who has a current Idaho driver's license and ~~be~~ is covered under vehicle liability insurance that covers passengers for business use. ~~(4-5-00)~~(1-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

575. PAYMENT FOR SERVICES.

Payment for health-related services provided by school districts ~~and~~ and Infant Toddler programs must be in accordance with rates established by the Department. ~~(4-5-00)~~(1-1-03)T

01. Matching Funds. School districts and ~~the~~ Infant Toddler ~~Programs~~ are responsible for certification of the state portion of the Medicaid payment and ~~shall~~ must document, as part of their fiscal records, the non-federal funds that have been designated as their certified match. ~~(4-5-00)~~(1-1-03)T

02. Payment In Full. Providers of services must accept as payment in full the Department's payment for such services and must not bill Medicaid ~~recipients~~ participants for any portion of any charges. ~~(4-5-00)~~(1-1-03)T

03. Third Party. ~~Third party payment resources, not to include other school or agency resources, such as private insurance, must be exhausted before the Department is billed for services. Proof of billing other third party payers is required.~~ For requirements regarding third party billing, see Section 030 of this chapter of rules. ~~(4-5-00)~~(1-1-03)T

04. Contracted Providers. A contracted provider of the school program may not submit a separate claim to Medicaid as the performing provider for services provided under the school-based program and codes. A contracted provider of a school program must accept the payment from Medicaid as payment in full and must not bill a participant for any portion of any charges. ~~(4-5-00)~~(1-1-03)T

05. Inpatients In Hospitals Or Nursing Homes. Payment for school ~~related~~ or Infant Toddler-based ~~related~~ services will not be provided to students who are inpatients in nursing homes or hospitals. Health-related services for students residing in an ICF/MR are eligible for reimbursement. ~~(4-5-00)~~(1-1-03)T

06. Recoupment Of Federal Share. Failure to provide services for which reimbursement has been received or to comply with these rules ~~and procedural guidelines established by the Department,~~ will be cause for

recoupment of the Federal share of payments for services, sanctions, or both. ~~(4-5-00)~~(1-1-03)T

07. Access To Information. The provider will grant the Department immediate access to all information required to review compliance with these rules. (4-5-00)

576. RECORD REQUIREMENTS.

In addition to the evaluations and maintenance of the ~~Individualized Education Program (IEP) plan or Individualized Family Service Plan (IFSP) plans~~, the following documentation must be maintained by the provider and retained for a period of six (6) years: ~~(5-3-03)~~(1-1-03)T

01. Service Detail Reports. A service detail report which includes: (4-5-00)

a. Name of student; (7-1-99)

b. Name and title of the person providing the service; (7-1-99)

c. Date, time, and duration of service; ~~and~~ ~~(7-1-99)~~(1-1-03)T

d. Place of service; ~~if provided in a location other than school; and~~ ~~(7-1-99)~~(1-1-03)T

e. Student's response to the service. (1-1-03)T

02. Activity Record. ~~An activity record completed at the time the service was provided which describes the service provided and the student's response to the service.~~ (4-5-00)

032. One Hundred ~~And~~ Twenty Day Review. A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual ~~IEP/IFSP plan.~~ ~~(4-5-00)~~(1-1-03)T

043. Documentation Of Qualifications Of Providers. (4-5-00)

054. Copies Of Required Referrals And Recommendations. Copies of required referrals and recommendations. (4-5-00)

065. Parental Notification. ~~Documentation that the School Districts and Infant/Toddler Programs must document that parents were notified the student's parents of the health-related services that and equipment for which they intended to will bill to Medicaid. Notification must describe the service and state the type, amount, and frequency of the service comply with the requirements in Section 577 of these rules.~~ ~~(4-5-00)~~(1-1-03)T

577. REQUIREMENTS FOR COOPERATION ~~OF SERVICES WITH AND NOTIFICATION OF PARENTS AND AGENCIES.~~

Each school district or ~~public educational agency~~ Infant Toddler Program billing for Medicaid services ~~shall~~ must act in cooperation with students' parents and with community and/or state agencies and professionals who provide like Medicaid services to the student. ~~(4-5-00)~~(1-1-03)T

01. Notification Of Parents. For all students who are receiving Medicaid reimbursed services, ~~the School Districts and Infant Toddler Programs shall~~ must ensure that parents are notified of the Medicaid services ~~that the school/agency will be submitting for reimbursement in relationship to their child and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s).~~ The school district ~~shall~~ must provide the student's parent/ or guardian with a current copy of the child's ~~IEP or IFSP plan~~ and any pertinent ~~addendums; addenda; and The IEP/IFSP or addendum shall describe the Medicaid reimbursable service and list the type, amount and frequency of that service.~~ ~~(4-5-00)~~(1-1-03)T

02. ~~Healthy Connection Program.~~ ~~Students in the Healthy Connection Program. School Districts/ Infant Toddler Program shall also provide to the Healthy Connection physician or practitioner of the healing arts a copy of the results of the evaluations that the physician/practitioner ordered, recommended or referred. A copy of the~~

~~current IEP or IFSP which lists the therapies/services that resulted from the ordered evaluations, and quarterly progress notes for those therapies/services. Evaluations, IEPs or IFSPs, and progress notes shall be provided to the physician within sixty (60) days of completion.~~ **Notification To Primary Care Physician.** School districts and Infant Toddler programs must request the name of the student's primary care physician from the parent or guardian so the school program can share health-related information with the physician. The following information must be sent to the student's primary care physician: ~~(4-5-00)~~(1-1-03)T

- a.** Results of evaluations within sixty (60) days of completion; (1-1-03)T
- b.** A copy of the cover sheet and services page within thirty (30) days of the plan meeting; and (1-1-03)T
- c.** A copy of progress notes, if requested by the physician, within sixty (60) days of completion. (1-1-03)T

03. Other Community/ And State Agencies. ~~Students who receive like Medicaid services through other community and/or state agencies and professionals.~~ Upon receiving a request for a copy of the evaluations or the current ~~IEP or IFSP plan,~~ the school district/ ~~public educational agency will~~ or Infant Toddler Program must furnish the requesting agency or professional with a copy of the ~~IEP or IFSP plan~~ or appropriate evaluation after obtaining consent for release of information from the student's parent/ or guardian. ~~(4-5-00)~~(1-1-03)T

04. Parental Consent To Release Information. School districts and Infant Toddler programs: (1-1-03)T

- a.** Must obtain consent from the parent to release information regarding education-related services, in accordance with Federal Education Rights and Privacy Act (FERPA) regulations; (1-1-03)T
- b.** Must document the parent's denial of consent if the parent refuses to consent to the release of information regarding education-related services; and (1-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0303

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

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 56, 102, 56-202, and 56-117, 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

These rules are being amended to provide clarification to providers. Section 123 is being amended to clarify occupancy levels for facilities maintaining less than 80% occupancy rates. Section 311 is being amended to provide that special rates may be effective up to thirty (30) days prior to when the application is received. Section 351 is being deleted. Section 454 is being amended to clarify amending the Disproportionate Share Hospitals (DSH) surveys before final determinations of DSH payments are made.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rule amendments are for clarification only.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 14th day of August, 2003.

Sherri Kovach, Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0303

123. OCCUPANCY ADJUSTMENT FACTOR.

In order to equitably allocate fixed costs to the Medicaid patients in cases where a facility is not maintaining reasonable occupancy levels, an adjustment will be made. No occupancy adjustment will be made against property reimbursement paid in lieu of property costs. The adjustment will be made as follows: (11-4-85)

- 01. Occupancy Levels.** If a facility maintains an average occupancy of less than eighty percent (80%)

of a facility's capacity, the total property costs not including cost paid under the rental rate, will be prorated based upon an eighty percent (80%) occupancy rate. Property cost and rental rates are defined in Section 004 of these rules. The facility's average occupancy percentage will be subtracted from eighty percent (80%) and the resultant percentage will be taken times the total fixed costs to determine the nonallowable fixed costs. ~~(1-1-82)~~(____)

02. Occupancy Adjustment. For purposes of an occupancy adjustment, facility capacity will be computed based upon the greater of the largest number of beds for which the facility was licensed during the period being reported on or the largest number of beds for which the facility was licensed during calendar year 1981, except where a portion of the facility has been converted to use for nonroutine nursing home activities or the facility is newly constructed and has entered the Medicaid Program subsequent to January 1, 1982. If the facility's designed capacity has been changed, the number of beds used to determine occupancy will be lowered by the amount of capacity being converted to nonroutine nursing home activities. Facility capacity for a new facility will be based on the number of beds approved by the certificate of need process less any capacity converted to nonroutine nursing home activities. (1-1-82)

03. Fixed Costs. For purposes of an occupancy adjustment fixed costs shall be considered all allowable and reimbursable costs reported under the property cost categories. (11-4-85)

04. Change In Designed Capacity. In cases where a provider changes the designed capacity of a facility, the average occupancy for the period prior to the change and subsequent to the change will be computed and each period will be adjusted separately. If the designed capacity is increased, the increased number of beds will not be subject to this adjustment for the first six (6) months following their licensure. (1-1-82)

05. New Facility. In the case of a new facility being licensed and occupied, the first six (6) months occupancy level will not be subject to this adjustment. (1-1-82)

(BREAK IN CONTINUITY OF SECTIONS)

311. SPECIAL RATES.

Section 56-117, Idaho Code, provides authority for the Director to pay facilities a special rate for care given to patients who have long term care needs beyond the normal scope of facility services. These patients must have needs which are not adequately reflected in the rates calculated pursuant to the principles set forth in Section 56-102, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of this section will be excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (4-5-00)

01. Determinations. A determination to approve or not approve a special rate will be made on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request will be for an expected condition that will be on-going for a period of greater than two (2) weeks. (4-5-00)

02. Application. Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in Section 56-102, Idaho Code. (4-5-00)

03. ~~Approval Effective Date.~~ Approved Upon approval. special rates will become effective on the date the application is received, ~~but no earlier than the first day of the month in which~~ unless the provider requests a retroactive effective date. Special rates may be retroactive for up to thirty (30) days prior to receipt of the application for a special rate was received. ~~(4-5-00)~~(____)

04. Reporting. Costs equivalent to payments at the special rate will be removed from the cost components subject to limits, and will be reported separately. (4-5-00)

05. Limitation. The reimbursement rate paid will not exceed the provider's charges to other patients for similar services. (4-5-00)

06. Prospective Rate Treatment. Prospective treatment of special rates became effective July 1, 2000. Subsections 311.07 through 311.09 of these rules provide clarification of how special rates will be handled under the prospective payment system. (8-1-02)T

07. Residents Qualifying. Special rates are intended for residents who have long term care needs beyond the normal scope of facility services, and whose needs are not adequately reflected in the rates set pursuant to Section 56-102, Idaho Code. (3-15-02)

08. Determination Of Payment For Qualifying Residents. Special rates shall be reimbursed in one (1) of the methods described in Subsections 311.08.a. through 311.08.d. of these rules. (8-1-02)T

a. Special Rate Units. If a facility operates a special rate unit; i.e., behavioral unit, or a Traumatic Brain Injury (TBI) unit, etc., the following reimbursement methods will apply under the circumstances described Subsections 311.08.a.i. through 311.08.a.vi. of these rules. (8-1-02)T

i. Facility is Under the Direct Care Limit - If the facility operates a special rate unit, the costs of which do not exceed the direct care limit, with all direct care costs included in the rate calculation, no special rate shall be paid for the unit. (3-15-02)

ii. Facility is Over the Direct Care Limit - If the facility operates a special rate unit, the costs of which exceed the direct care limit, with all direct care costs included in the rate calculation, the special rate for the unit will be equal to the lesser of the per diem amount by which direct care costs exceed the limit, or the special rate add-on calculated as follows: each Medicaid resident approved for a special rate is classified using Medicare's grouper (currently RUG's III v.5.12 44 Group) and is assigned a total rate equal to the applicable Medicare price that would be paid if the resident were Medicare eligible. The special rate "add-on" to the facility rate is calculated by subtracting the resident-specific Medicaid rate (based on each resident's Medicaid CMI) from the Medicare price. The average of the special rate add-on amounts calculated using this methodology shall be compared to the amount the provider is over the limit. The lesser amount is allowed as a special rate. (3-15-02)

iii. New Unit Added Before July 1, 2000 - A unit added before July 1, 2000 that does not have sufficient historical cost data in the cost report used to set the rate shall receive the same rate that would have been set under the retrospective system until a cost report with sufficient cost detail is filed. (3-15-02)

iv. New Unit Added after July 1, 2000 - To qualify for special rates, new units, or increases to the number of licensed beds in an existing unit must first receive Departmental approval. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. Those residents who are approved for special rates will have their special rate calculated as the difference between the applicable Medicare price under PPS, and the Medicaid rate for that individual resident as explained in Section 311.08.a.ii. of these rules. However, the amount would not be limited to the amount the provider is over the limit, as the costs of the unit are not in the rate calculation. (8-1-02)T

v. One Hundred Percent (100%) Special Care Facility in Existence as of July 1, 2000 - If at July 1, 2000 an entire facility is devoted to caring for "special rate" residents, including Medicaid residents approved for special rates as well as private pay and other residents who would qualify for special rates if they were Medicaid eligible, the facility's allowable reimbursement will be calculated as follows. The costs of the direct care component will not be subject to the cost limit. However, those costs will still be case-mix adjusted based on the ratio of the Medicaid case-mix to the facility-wide case-mix index. (3-15-02)

vi. Customary Charge - If the cost to operate a special rate unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for that unit on the quarterly reporting form. A weighted customary charge shall be computed by taking the number of Medicaid days approved for special rates times the usual and customary charge for private pay individuals in that unit, plus the Medicaid days not in the special rate unit times the usual and customary charge for that portion of the facility. (3-15-02)

b. Equipment/Non-Therapy Supplies. Equipment and non-therapy supplies not adequately addressed in the current RUG's system shall be reimbursed at invoice cost as an add-on to the facility's rate for the resident

receiving the equipment or supplies. The facility need not exceed the direct care limit to receive a special rate for such services. Items that qualify for such treatment include but are not limited to the following: air fluidized beds, overlay mattresses, TPN supplies and VAC wound care. (3-15-02)

c. Ventilator Dependent Residents and Residents Receiving Tracheotomy Care. In the case of ventilator dependent and tracheotomy residents, a two (2) step approach shall be taken to establish the special rate. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheotomy care. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents. The add-on shall be calculated following the provisions set forth in Subsection 311.08.d. of these rules. The second step shall be an equipment, supply, or both add-on to be added to the rate up to the invoice cost or rental amount. The combined amount of these two (2) components shall be considered the special rate. (8-1-02)T

d. Residents Who Do Not Reside in a Special Rate Unit Requiring One-to-One Staffing Ratios. Facilities that do not have established units with a cost history built into their cost reports and rates may at times have residents who require unusual levels of staffing; such as, one-to-one staffing ratios. If the resident qualifies for a special rate, the additional reimbursement will be allowed as follows:

Example Using Sixteen (16) Hours of One-To-One Care	
Total hours per day:	24.0
Less minimum staff level required:	(2.0)
Net special rate hours allowed:	22.0
Average wage rate of CNA's per WAHR survey:	\$7.53
Plus benefits at thirty percent (30%):	\$2.26
Allowed wages and benefits:	\$9.79
Allowable daily special rate add-on:	\$215.38
Divided by total hours:	24.0
Calculated hourly rate:	\$8.97
One to one hours approved:	16.0
Sixteen (16) hours of one to one add-on:	\$143.53

(3-15-02)

e. For differing levels of one-to-one care; i.e., eight (8) hours or twenty-four (24) hours, only the total hours of one-to-one care approved would be changed in Subsection 311.08.d. The WAHR CNA wage rate as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 148 will be updated prior to the July 1st rate setting each year. Should the WAHRS survey be discontinued, prior amounts may be indexed forward, or a comparable survey may be conducted. (8-1-02)T

09. Treatment Of The Special Rate Cost For Future Rate Setting Periods. Special rates shall be established on a prospective basis similar to the overall facility rate. When a cost report is used to set a prospective rate contains special rate cost, an adjustment shall be made to "offset," or remove, the amount received for the special rates from the calculation of costs. The amount received shall be calculated by multiplying the special rate paid for each qualifying resident by the number of days that were paid. The case-mix index for each resident shall be left in the facility-wide average and the Medicaid average for rate setting purposes, as the offset would only be for the incremental portion of the rate, above what Medicaid would have paid. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

351. **PRINCIPLE (RESERVED).**

All financial reports will be subject to audit in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.02, "Rules Governing Audits of Providers". (4-28-89)

(BREAK IN CONTINUITY OF SECTIONS)

454. **ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS (DSH).**

All hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (7-1-97)

01. DSH Survey Requirements. *On or before January 31, of each calendar year, the Department will send each hospital a DSH Survey. Each hospital shall return the DSH Survey on or before May 31 of the same calendar year. A hospital shall not be entitled to a DSH payment if the hospital fails to return the DSH Survey by the May 31 deadline without good cause as determined by the Department. From the DSH Survey and Department data, payments distributing the state's annual DSH allotment amount will be made by September 30 of the same calendar year.* The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. The Department must notify each hospital of their calculated DSH payment no later than July 15 of each calendar year. When a hospital intends to file an amended survey to complete, correct, or revise the original survey, the requested revision with supporting documentation must be received by the Department within thirty (30) days of the notice of the calculated payment. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. (7-1-97)(____)

02. Mandatory Eligibility. Mandatory Eligibility for DSH status shall be provided for hospitals which: (4-5-00)

- a.** Meet or exceed the disproportionate share threshold as defined in Subsection 451.13. (7-1-97)
- b.** Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services, and have provided such services to individuals entitled to such services under the Idaho Medical Assistance Program for the reporting period. (4-5-00)
 - i.** Subsection 454.02.b. does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (7-1-97)
 - ii.** Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (7-1-88)
- c.** The MUR shall not be less than one percent (1%). (7-1-97)
- d.** If a hospital exceeds both disproportionate share thresholds, set forth in Subsection 451.13, and the criteria of Subsections 454.02.b. and 454.02.c. are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 454.02 f. through 454.02.j. (7-1-97)
- e.** In order to qualify for a DSH payment, a hospital located outside the state of Idaho shall: (7-1-97)
 - i.** Qualify under the mandatory DSH requirements set forth in this Section; (7-1-97)
 - ii.** Qualify for DSH payments from the state in which the hospital is located; and (7-1-97)
 - iii.** Have fifty thousand dollars (\$50,000) or more in covered charges for services provided to Idaho

recipients during the year covered by the applicable DSH Survey. (4-5-00)

f. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals shall receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

g. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

h. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

i. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) shall receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

j. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) shall receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

03. Out-Of-State Hospitals Eligible For Mandatory DSH Payments. Out-of-state hospitals eligible for Mandatory DSH payments will receive DSH payments equal to one half (1/2) of the percentages provided for Idaho hospitals in Subsections 454.02.d. through 454.02.j. (7-1-97)

04. Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 454.02, will be designated a Deemed Disproportionate Share Hospital. Out of state hospitals will not be designated as Deemed DSH. The disproportionate share payment to a Deemed DSH hospital shall be the greater of: (7-1-97)

a. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (4-5-00)

b. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH Allotment Amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (7-1-97)

05. Insufficient DSH Allotment Amounts. When the DSH Allotment Amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH Allotment Amount was exceeded. (4-5-00)

06. DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the state plan or were uninsured for health care services provided during the year. (7-1-97)

a. Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state shall not be considered a source of third party payment. (7-1-97)

b. Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (4-5-00)

07. DSH Will Be Calculated On An Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (4-5-00)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.17 - SERVICE COORDINATION

DOCKET NO. 16-0317-0301 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

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 Section 56-202(B), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 14, 2003, from 3:00 to 5:00 p.m., in Boise, Idaho at the Region 4, Office of the Department of Health and Welfare (DHW), 1720 Westgate, Suite D, Room 119.

October 14, 2003, from 3:00 to 5:00 p.m. in Idaho Falls at the Region 7, Office of the DHW, 150 Shoup, 2nd Floor, Large Conference Room;

October 17, 2003, from 3:00 to 5:00 p.m., in Coeur d'Alene, Idaho at the Region 1, Office of the DHW, 1120 Ironwood Drive, Suite 102, Lower Level Large Conference Room.

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 making:

This new chapter of rules revises several sections of current rules pertaining to "case management" now referred to as "service coordination". This rule applies to four (4) types of Medicaid participants who are eligible for service coordination currently found in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program". The four (4) types are: individuals with developmental disabilities; those authorized to receive personal assistance services; adults with severe and persistent mental illness; and children under the age of twenty-one (21). This new chapter contains all general functions and specific requirements of service coordination that are common to all four (4) participant types.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the following groups: Case Management Association; Idaho Mental Health Association; Advocate groups for Mental Health and Developmental Disabilities; Personal Care Services agencies; Aged and Disabled (waivers) agencies and participants; Idaho Parents Unlimited; Council on Developmental Disabilities; Children's Services and participates who receive case management services from providers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Paul Leary at (208) 364-1840.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 18th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0317-0301

IDAPA 16
TITLE 03
CHAPTER 17

16.03.17 - SERVICE COORDINATION

000. LEGAL AUTHORITY.

The Idaho Department of Health and Welfare has authority to promulgate rules governing the administration of public assistance programs, according to Section 56-202(b), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.03.17, "Service Coordination". ()

02. Scope. These rules describe service coordination for participants of the Idaho Medicaid program who are unable, or have limited ability to gain access, coordinate or maintain services on their own or through other means. Unless otherwise provided in this chapter, the requirements of IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," apply. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter. These documents are available for public inspection as described in Section 005 and Subsection 006.02 of these rules. ()

003. ADMINISTRATIVE APPEALS.

All contested cases are governed by provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings". ()

004. INCORPORATION BY REFERENCE.

The Department has incorporated by reference the following documents: ()

01. State Medicaid Manual. Centers for Medicare and Medical Services, Publication No. 45, Part Four (4) - Services, Section 4302, "Optional Targeted Case Management Services - Basis, Scope and Purpose," (August 28, 2002). This document is available online at <http://www.cms.gov/manuals/cmstoc.asp> or requested by mail at the Centers for Medicare and Medical Services, 7500 Security Boulevard, Baltimore, Maryland 21244. ()

02. DSM-IV-TR. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83720-0036. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and

Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

05. Internet Website. The Department's internet website is found at "http://www2.state.id.us/dhw". ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

01. Confidentiality Of Records. Confidential information used or disclosed in the course of the Department's business is subject to the restrictions in state or federal law, federal regulation and Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

02. Public Records Act. Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. The APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. ()

007. LIMITATIONS ON THE PROVISION OF DIRECT SERVICES.

Providers of service coordination services may not provide both service coordination and direct service to the same Medicaid participant except for the following: ()

01. Early And Periodic Screening Diagnosis And Treatment (EPSDT). Providers of service coordination to children under the EPSDT option; or ()

02. Adults With Severe And Persistent Mental Illness. Providers of service coordination to adults with severe and persistent mental illness. ()

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. Agency. An agency is a business entity that provides service coordination and includes at least a supervisor and a service coordinator. ()

02. Brokerage Model. Referral or arrangement for services identified in an assessment. This model does not include the provision of direct services. ()

03. Crisis. An unanticipated event, circumstance or life situation that places a participant at risk of at least one (1) of the following: ()

a. Hospitalization; ()

b. Loss of housing; ()

c. Loss of employment or major source of income; ()

d. Incarceration; or ()

- e. Physical harm to self or others, including family altercation or psychiatric relapse. ()
- 04. Crisis Service Coordination.** Crisis service coordination services are linking, coordinating and advocacy services provided to assist a participant to access emergency community resources in order to resolve a crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. ()
- 05. Current Assessment.** An assessment that accurately reflects the status of the participant. ()
- 06. Department.** The Idaho Department of Health and Welfare or its designee. ()
- 07. High Cost Services.** As used in Subsection 203.01 of these rules, high cost services are medical services that result in expensive claims payment or significant state general fund expenditure that may include:()
- a. Emergency room visits or procedures; ()
- b. Inpatient medical and psychiatric services; ()
- c. Nursing home admission and treatment; ()
- d. Institutional care in jail or prison; ()
- e. State, local, or county hospital treatment for acute or chronic illness; and ()
- f. Outpatient hospital services. ()
- 08. Human Services Field.** A particular area of academic study in health, social services, education, behavioral science or counseling. ()
- 09. Paraprofessional.** An adult who has a minimum of a bachelor's degree in a human services field but no experience with participants, or a person without a degree but with a high school diploma or equivalency who has at least twelve (12) months' experience with the population to whom they will be providing services. ()
- 10. Practitioner Of The Healing Arts.** For purposes of this rule, a nurse practitioner, physician assistant or clinical nurse specialist. ()
- 11. Service Coordination.** Service coordination is a brokerage model of case management as defined in the State Medicaid Manual. ()
- 12. Service Coordinator.** An individual who provides service coordination to a Medicaid eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements in Section 700 of these rules. ()
- 13. Supports.** Formal and informal services and activities that are not paid for by the Department and that enable an individual to reside safely in the setting of his choice. ()
- 011. -- 014. (RESERVED).**
- 015. HEALTH, SAFETY AND FRAUD REPORTING.**
Service coordinators are required to report any concerns about health and safety to the appropriate governing agency and to the Department. Service coordinators must also report fraud, including billing of services that were not provided, to the Department unit responsible for authorizing the service; and to the Surveillance and Utilization Review Unit (SUR) within the Department or its toll-free Medicaid fraud hotline. ()
- 016. -- 099. (RESERVED).**

100. PRIOR AUTHORIZATION FOR SERVICE COORDINATION SERVICES.

All service coordination services must be prior authorized by the Department, except the following adult mental health service coordination services: initial assessment for services; five (5) hours of ongoing service coordination per month; and the first three (3) hours of crisis service coordination per month. For adults with mental illness, crisis service coordination over three (3) hours per month must be prior authorized. ()

101. -- 199. (RESERVED).

200. ELIGIBILITY FOR SERVICE COORDINATION SERVICES.

Participants identified in Sections 201 through 204 of these rules, who do not receive hospice services or live in hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, are eligible for service coordination. ()

201. ELIGIBILITY - INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY.

Individuals with a developmental disability as defined in Section 66-402, Idaho Code, are eligible for service coordination if they: ()

01. Age. Are adults eighteen (18) years of age or older, or adolescents fifteen to eighteen (15-18) years of age who are authorized to receive services through the Idaho State School and Hospital (ISSH) waiver; and ()

02. Diagnosis. Are diagnosed with a developmental disability, which means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ()

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and ()

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ()

c. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated; and ()

03. Need Assistance. Require and choose assistance to adequately access services and supports necessary to maintain their independence in the community. ()

202. ELIGIBILITY - INDIVIDUALS WHO RECEIVE PERSONAL ASSISTANCE SERVICES.

Individuals who receive personal assistance services are eligible for service coordination if they: ()

01. Personal Care Services. Are adults or children who receive state plan personal care services; or ()

02. Waiver Services. Are adults who receive Aged and Disabled Home and Community Based Services Waiver; and ()

03. Need Assistance. Require and choose assistance to access services and supports necessary to maintain their independence in the community. ()

203. ELIGIBILITY - ADULTS WITH SEVERE AND PERSISTENT MENTAL ILLNESS.

Adults with severe and persistent mental illness are eligible for service coordination if they: ()

01. Adults Using High Cost Services. Are eighteen (18) years of age or older and using, or have a history of using, high cost medical services associated with periods of increased severity of mental illness; and ()

02. Diagnosis Of Mental Illness. ()

a. Are diagnosed by a licensed physician or other licensed practitioner of the healing arts with a condition of severe and persistent mental illness that is listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) within one (1) of the following classification codes: ()

i. Schizophrenia and other psychotic disorders; ()

ii. Delirium, dementia, and amnesic disorders; other cognitive disorders; and mental disorders due to a general medical condition; ()

iii. Mood disorders - bipolar and depressive; ()

iv. Schizoid, schizotypal, paranoid or borderline personality disorders; and ()

b. If the only diagnosis is mental retardation or is a substance related disorder, then the person is not included in the target population for mental health service coordination. ()

03. Need Assistance. Have mental illness of sufficient severity to cause a disturbance in their role performance or coping skills in at least two (2) of the following areas, on either a continuous (more than one (1) year) or an intermittent (at least once per year) basis: ()

a. Vocational or academic: Is unemployed, unable to work or attend school, is employed in a sheltered setting or supportive work situation, or has markedly limited skills and a poor work history. ()

b. Financial: Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help, or the person is unable to support himself or manage his finances without assistance. ()

c. Social and interpersonal: Has difficulty in establishing or maintaining a personal social support system, has become isolated, has no friends or peer group and may have lost or failed to acquire the capacity to pursue recreational or social interests. ()

d. Family: Is unable to carry out usual roles and functions in a family, such as spouse, parent, or child, or faces gross familial disruption or imminent exclusion from the family. ()

e. Basic living skills: Requires help in basic living skills, such as hygiene, food preparation, or other activities of daily living, or is gravely disabled and unable to meet daily living requirements. ()

f. Housing: Has lost or is at risk of losing his current residence. ()

g. Community: Exhibits inappropriate social behavior or otherwise causes a public disturbance due to poor judgment, bizarre, or intrusive behavior, which may result in intervention by law enforcement, the judicial system, or both. ()

h. Health: Requires substantial assistance in maintaining physical health or in adhering to medically rigid prescribed treatment regimens. ()

204. ELIGIBILITY - CHILDREN UP TO THE AGE OF TWENTY-ONE.

To be eligible for service coordination under the Early and Periodic Screening Diagnosis and Treatment program (EPSDT), children must meet the following: ()

01. Age. Children from birth through the month in which their twenty first (21st) birthday occurs; and ()

02. Diagnosis. Must be identified by a physician or other practitioner of the healing arts in an EPSDT screen as having: ()

a. Developmental delay or disability: A physical or mental condition which has a high probability of resulting in developmental delay or disability, or children who meet the definition of developmental disability as defined in Section 66-402, Idaho Code; or ()

b. Special health care needs: Have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize a disability; or ()

c. Severe emotional disorder: Have been diagnosed with a severe emotional disorder under DSM-IV-TR, with an expected duration of at least one (1) year; and ()

03. Need Assistance. Have one (1) or more of the following problems associated with their diagnosis: ()

a. The condition has resulted in a level of functioning below normal age level in one (1) or more life areas such as school, family, or community; or ()

b. The child is at risk of placement in a more restrictive environment or the child is returning from an out of home placement as a result of the condition; or ()

c. There is danger to the health or safety of the child or the parent is unable to meet the needs of the child; or ()

d. Further complications may occur as a result of the condition without provision of service coordination services; or ()

e. The child requires multiple service providers and treatments. ()

205. -- 249. (RESERVED).

250. SERVICE COORDINATION FUNCTIONS.

Service coordination consists of the following functions: ()

01. Linking The Participant To Needed Services. "Linking" includes: ()

a. Finding, arranging and assisting the participant to maintain services, supports, and community resources identified on the service plan; and ()

b. Advocating for the unmet needs of the participant and to encourage independence. ()

02. Monitoring And Coordination Of Services. Monitoring and coordinating services includes: ()

a. Assisting the participant and his family or guardian to coordinate and retain services, and assure consistency and non-duplication between services; and ()

b. Assuring that services are satisfactory to the participant and making adjustments in the plan of service when needed. ()

251. -- 299. (RESERVED).

300. ASSESSMENT.

Assessment for service coordination services includes evaluation of the participant's ability to gain access to services, coordinate or maintain services and to identify the services, and supports the participant needs to maintain his highest level of independence in the community. The assessment is an interactive process with maximum feasible involvement of the participant. ()

01. Assessment Content For Developmental Disability. A person with a developmental disability is assessed through the developmental disability eligibility criteria identified in Section 66-402, Idaho Code. The need for assistance, as defined in Subsection 201.03 of these rules, must be determined through the person centered planning process as defined in IDAPA 16.04.11, "Rules Governing Development Disabilities Agencies," Section 003. ()

02. Assessment Content For Personal Assistance Services. A comprehensive evaluation of the participant's ability to function in the community including: ()

- a. Medical needs, physical problems and strengths; ()
- b. Mental and emotional problems and strengths; ()
- c. Physical living environment; ()
- d. Vocational and educational needs; ()
- e. Financial and social needs; ()
- f. Evaluation of the community support system including the involvement of family or significant others; ()
- g. Safety and risk factors; and ()
- h. Legal status. ()

03. Assessment Content For Mental Health. The assessment must focus on the following areas: ()

- a. Mental status (psychiatric status for individuals with mental illness); ()
- b. Medical history and needs; ()
- c. Vocational status and needs; ()
- d. Financial status and needs; ()
- e. Social relationships and supports; ()
- f. Family status and supports; ()
- g. Basic living skills and needs; ()
- h. Housing status and needs; and ()
- i. Community and legal status and needs. ()

04. EPSDT Assessment. The assessment for EPSDT Service Coordination services is completed by the Department or its designee. ()

301. -- 399. (RESERVED).

400. SERVICE PLAN DEVELOPMENT.

A written service coordination plan must be developed and implemented within thirty (30) days after the participant chooses a service coordination agency. The plan must be updated at least annually. The plan must address the service coordination needs of the participant as identified in the assessment. ()

01. Service Plan Content For Individuals With Developmental Disabilities. The service coordination plan for individuals with developmental disabilities is incorporated into the participant's plan of service. The content is identified in IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services," Section 310. ()

02. Service Plan Content For Individuals Receiving Personal Assistance Services. The individual's service plan must contain at least the following: ()

- a.** Problems identified during the assessment; ()
- b.** Overall goals to be achieved; ()
- c.** Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the service coordinator to develop the support system; ()
- d.** Documentation of who has been involved in the service planning, including the participant's involvement; ()
- e.** Schedules for service coordination monitoring and reassessment; ()
- f.** Documentation of unmet needs and service gaps; and ()
- g.** References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery. ()

03. Service Plan Content For Individuals With Severe And Persistent Mental Illness. The service coordination plan must include the following: ()

- a.** A list of problems and needs identified during the assessment; ()
- b.** Concrete measurable goals and objectives to be achieved by the service coordinator; ()
- c.** Time frames for achievement of the goals and objectives; ()
- d.** Reference to any formal services arranged including specific providers; ()
- e.** Frequency of services initiated; and ()
- f.** Documentation of who was involved in the service planning. ()

04. Service Plan Development For EPSDT Service Coordination. The initial plan for EPSDT service coordination is completed by the Department or designee. An EPSDT service coordination agency selected by the family develops an annual service coordination plan and submits it to the Department for prior authorization of continued service coordination. ()

401. -- 499. (RESERVED).

500. SERVICE COORDINATOR CONTACT AND AVAILABILITY.

01. Contact With Participant. At least every thirty (30) days, service coordinators must have contact with the participant, legal guardian or provider who can verify the participant's well being and whether services are being provided according to the written plan. The frequency, mode of contact, and person being contacted must be identified in the plan. ()

- a.** Developmental disabilities service coordinators must have face-to-face contact with each participant at least every ninety (90) days. ()

b. Mental health service coordinators must have a face-to-face contact every month with each participant. ()

02. Hours Of Availability. Service coordinators do not have to be available on a twenty-four (24) hour basis, but must include on the plan what the participant, families, and providers should do in an emergency situation. ()

501. -- 549. (RESERVED).

550. PARTICIPANT CHOICE OF SERVICE COORDINATORS AND PROVIDERS.

Eligible participants have the option to select service coordinators. A participant must have free choice of service coordinators as well as providers of Medicaid services. ()

551. -- 599. (RESERVED).

600. CRISIS ASSISTANCE.

01. Crisis Assistance. Crisis assistance, including services to prevent hospitalization or incarceration, may be provided before the completion of assessment and development of a plan of service. ()

02. Crisis Assistance For Children Receiving EPSDT Service Coordination. Additional crisis hours may be authorized for service coordination for children receiving EPSDT service coordination if at least four (4) hours of service coordination have already been provided in the month. ()

03. Crisis Assistance For Adults With A Developmental Disability. Crisis assistance for adults with a developmental disability may be authorized under community crisis supports as found in IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services," Section 400. ()

04. Crisis Assistance For Adults With Severe And Persistent Mental Illness. Crisis assistance may be delivered prior to, or after, the completion of the assessment and individual service plan. Without authorization by the Department or its designee crisis assistance is limited to a total of three (3) hours per calendar month. The Department may authorize additional crisis case management services beyond the three (3) hour limit if a recipient still has severe or prolonged crisis case management needs that meet all of the following criteria: ()

a. The service recipient is at imminent risk (within fourteen (14) days) of hospitalization or institutionalization, including jail or nursing home; and ()

b. The service recipient is experiencing symptoms of psychiatric decompensation; and ()

c. The service recipient has already received the maximum number of monthly hours of ongoing case management and crisis case management services; and ()

d. No other crisis assistance services are available to the recipient under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). ()

05. Crisis Assistance For Individuals Who Receive Personal Assistance Services. Additional hours for crisis assistance may be authorized for individuals who receive personal assistance services, if at least eight (8) hours of service coordination have already been provided in the month. ()

601. -- 699. (RESERVED).

700. SERVICE COORDINATOR QUALIFICATIONS.

01. Provider Agreements. Service coordinators must be employees or contractors of an agency that has a valid provider agreement with the Department. ()

02. Work Experience And Supervision. All service coordinators must have at least twelve (12)

months' experience working with the population they will be serving or be supervised by a qualified service coordinator. ()

03. Minimum Education Requirements. All service coordinators must have a minimum of a bachelor's degree in a human services field from a nationally accredited university or college; or be a licensed professional nurse, also referred to as a registered nurse (RN). ()

04. Criminal History Check. All service coordinators must pass the Department's criminal history check in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ()

701. -- 724. (RESERVED).

725. PARAPROFESSIONALS.

Under the supervision of a qualified service coordinator, paraprofessionals may be used to assist in the implementation of a service coordination plan except for plans of participants with a mental illness. Paraprofessionals must be able to read and write at a level equal with the paperwork and forms involved in the provision of service. All paraprofessionals must pass the Department's criminal history check as described in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ()

726. -- 749. (RESERVED).

750. SUPERVISION OF SERVICE COORDINATION.

Service coordination agencies must provide supervision to qualified service coordinators and paraprofessionals employed by the agency. ()

01. Supervisor Qualifications. Agency supervisors must have the following qualifications: ()

a. Master's degree in a human services field and one (1) year's experience with the population for whom they will be supervising services. For supervisors of service coordination for participants with mental illness, this experience must be in a mental health service setting; or ()

b. Bachelor's degree in a human services field or RN degree and two (2) years' experience with the population for whom they will be supervising services. For supervisors of service coordination to participants with mental illness, this experience must be in a mental health service setting. ()

751. AGENCY CASE LOADS.

The total caseload of a service coordinator must assure quality service delivery and client satisfaction. ()

752. DOCUMENTATION OF SERVICE COORDINATION.

Agencies must maintain records that contain documentation describing the services provided, review of the continued need for service coordination and progress toward each service coordination goal. Documentation must be completed as required in Section 56-209(h), Idaho Code. All active records must be immediately available. Documentation must include all of the following: ()

01. Name. The name of the eligible participant. ()

02. Provider. The name of the provider agency and the person providing the direct services. ()

03. Time And Place Of Service. The date, time and place the service was provided. ()

04. Documentation Of Eligibility. A copy of the current assessment or prior authorization from the Department that documents eligibility for service coordination services, and a dated and signed service plan. ()

05. Description. Agency records must contain documentation describing details of the service provided signed by the person who delivered the service. ()

06. Progress Review. Review of participant's continued need for service coordination and progress ()

toward each service coordination goal. A review must be completed at least every one hundred eighty (180) days after the plan development or update. ()

07. Satisfaction With Service. Documentation of the participant's, family's, or guardian's satisfaction with service. ()

08. Informed Consent. A copy of the informed consent form signed by the participant or guardian which documents that the participant has been informed of his rights to refuse service coordination and to choose his providers. ()

09. Service Plan. A service plan that is signed by the participant or his legal representative, and the plan developer. Mental health service coordination plans must also be signed by a physician or other practitioner of the healing arts. The service coordinator must also document that a copy of the plan was given to the participant or his legal representative. The plan must be updated and authorized when required, but at least annually. ()

10. Crisis Assistance Documentation For Adults With Severe And Persistent Mental Illness. Documentation to support authorization of crisis assistance beyond the monthly limitation must be submitted to the Department before such authorization may be granted. Documentation to support delivery of crisis assistance must also be maintained in the recipient's agency record and must include: ()

a. A description of the crisis, including identification of unanticipated events that precipitate the need for crisis case management services; ()

b. A brief review of case management and other services or supports available to, or already provided to, the participant to resolve the crisis; ()

c. A crisis resolution plan; and ()

d. Outcomes of crisis assistance service provision. ()

753. -- 799. (RESERVED).

800. LIMITATIONS ON SERVICE COORDINATION.

When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as service coordination services. Service coordination is limited to the following: ()

01. Service Coordination For Persons With Mental Illness. Five (5) hours per month for participants with mental illness. ()

02. Service Coordination For Personal Assistance Services. Up to eight (8) hours per month for participants who receive personal assistance services, as prior authorized by the Department. ()

03. Other Populations. Service coordination services to participants with developmental disabilities and children under the EPSDT option are prior authorized by the Department on a monthly basis. ()

04. Assessment And Plan Development. Assessment and plan development are reimbursable except for the initial plan development for EPSDT service coordination. ()

05. Initial Plan Development. Reimbursement for the initial evaluation and individual service plan development will be paid based on an hourly rate, not to exceed six (6) hours. ()

801. LIMITATIONS ON PAYMENT FOR SERVICE COORDINATION.

01. Duplication. Participants are only eligible for one (1) type of service coordination. If they qualify for more than one (1) type, the participant must choose one (1). Service coordination payment must not duplicate payment made to public or private sector entities under other program authorities for this same purpose. ()

02. Payment For Service Coordination. Subject to the service limitations in Subsection 801.06 of this rule, only the following services are reimbursable: ()

a. Face to face contact as required in Section 500 of these rules. ()

b. Telephone contact between the service coordinator and the participant, participant's service providers, family members, primary care givers, legal representative, or other interested persons; or ()

c. Face to face contact between the service coordinator and the participant's family members, legal representative, primary caregivers, providers, or other interested persons. ()

d. Paperwork that is associated with obtaining certain needed services such as food stamps, energy assistance, emergency housing, or legal services. ()

03. Service Coordination During Institutionalization. Service coordination is reimbursable on the day a participant is admitted to a medical institution if the service is provided prior to admission. Service coordination is reimbursable on the day of discharge from a medical institution if the service is provided after discharge. Service coordination may be provided during the last thirty (30) days of an inpatient stay, or if the stay is not expected to last longer than thirty (30) days, when the service does not duplicate the discharge responsibilities of the facility. ()

04. Incarceration. Service coordination is not reimbursable when the recipient is incarcerated. ()

05. Services Delivered Prior To Assessment. Payment for on-going service coordination will not be made prior to the completion of the assessment and service plan. ()

06. Payment Limitations. Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments with the Medicaid service coordinator, transporting participants, or documenting services. For service coordination paid at an hourly rate, providers will not be reimbursed for more than one (1) contact during a single fifteen (15) minute time period. ()

07. Healthy Connections. If the participant is enrolled in Healthy Connections, the referral for assessment and provision of services must be authorized by a physician or other practitioner of the healing arts, except for participants who receive personal care services or aged and disabled waiver services. ()

08. Group Service Coordination. Payment is not allowed for service coordination provided to a group of participants. ()

802. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.22 - RULES FOR LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES

DOCKET NO. 16-0322-0301

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 39-3305, 39-3371, 39-3505, and 39-3561, 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule making:

The 2003 Legislature passed House Concurrent Resolution 17 directing the Department and the Board of Pharmacy to allow the return of unused or unopened medications to be returned to the dispensing pharmacy for credit by licensed residential care and assisted living facilities. Section 428 is being amended to reference the Board of Pharmacy rules for the return for credit of unused or unopened medication and to delete a statement that is in conflict with their rules. This section is also being amended to correct the reference to the Board of Nursing rules in Subsection 428.01.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with providers of residential care and assisted living facilities, consumers and families of residential care or assisted living services, Idaho pharmacists, the Board of Pharmacy, Office of Performance Evaluations, advocacy groups and professional associations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Debby Ransom at 334-6626.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 8th day of August, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0322-0301

428. MEDICATION STANDARDS AND REQUIREMENTS.

01. Medication Policy. Each facility shall develop and implement a written medication policy and procedure that outlines in detail the procedures to be followed regarding the delegation of medications and to include the requirements of ~~the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Board of Nursing;" Subsection 010.05, Section 400, Subsections 400.02, 400.04, and 400.05 where applicable.~~ The medication policy shall include, but not be limited to, the following: ~~(3-10-00)~~(____)

a. If the resident is granted responsibility for his own medication, a written approval stating that the resident is capable of self-administration of medications, must be obtained from the resident's primary physician or authorized provider; (5-3-03)

b. The facility shall take the necessary precautions to protect residents from obtaining medications that are being stored either in individual resident rooms or by the facility; (3-10-00)

c. The facility administrator shall be responsible for providing the necessary assistance to the resident in taking his medication; (3-10-00)

d. Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. All PRN medication shall be documented with the reason for taking the medication. (3-10-00)

02. Medication Distribution System. Each facility shall use Medi-sets, or blister pack, or other system as approved by the department. The Medication System must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards. ~~A licensed nurse may fill Medi-sets which must be appropriately labeled with medication name, dosage, amount and time to be taken, and special instructions if appropriate.~~ ~~(3-10-00)~~(____)

03. Assistance With Medication. PRN medications and temporary routine medications of fourteen (14) days or less may be maintained in an appropriately labeled multidose container. Each medication must be given to the resident directly from the medi-set or blister pack or medication container. The resident must be observed taking the medication. (3-10-00)

04. Unused Medication. Unused or discontinued medications shall not accumulate at the facility for longer than thirty (30) days, unless there is reason to believe that the medication will be reordered by the attending physician or authorized provider within a reasonable length of time. The unused medication may be returned to the dispensing pharmacy for credit as allowed by IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy," or shall be disposed of in a manner that assures that it cannot be retrieved. A written record of all disposal of drugs shall be maintained in the facility and shall include: ~~(5-3-03)~~(____)

a. A description of the drug, including the amount; (3-10-00)

b. The resident for whom the medication was prescribed; (3-10-00)

c. The reason for disposal; (3-10-00)

d. The method of disposal; ~~and~~ ~~(3-10-00)~~(____)

e. The date of disposal or return; and (____)

ef. Signatures of responsible facility personnel and a witness. (3-10-00)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-0301 - (CHAPTER REPEAL)

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 Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This chapter of rules is being repealed and re-written in order to comply with the Health Insurance Portability and Accountability Act (HIPAA). The re-write of this Chapter can be found in Docket Number 16-0501-0302 immediately following this notice and the chapter is renamed IDAPA 16.05.01, "Use and Disclosure of Department Records".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this repeal of rule is necessary to comply with deadlines in amendments to governing laws and federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Jeanne Goodenough, Division Chief, Office of the Attorney General, at (208) 334-5537.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 30th day of July, 2003.

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IDAPA 16.05.01 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-0302 - (CHAPTER REWRITE)

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 Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This chapter was published on April 2, 2003 as Temporary with the effective date of April 14, 2003. This proposed rule has revisions based on comments from training sessions and further review by staff since being published as temporary. This chapter of rules has been rewritten in order to comply with the Health Insurance Portability and Accountability Act (HIPAA). This chapter is renamed IDAPA 16.05.01, "Use and Disclosure of Department Records". The rewrite of rules conforms to the needed changes within HIPAA and clarifies and simplifies the current rules pertaining to Department confidentiality of records. They establish clear guidelines for the use and disclosure of protected health information, and grant certain rights to individuals relating to their health information. The new rule provides one simplified set of rules for the entire Department.

In April 2003, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of April 14, 2003. The temporary rule was published in the Idaho Administrative Bulletin, Volume 03-4, April 2, 2003, pages 15 through 28. With this publication the Department is initiating proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this new chapter of rule is necessary to comply with deadlines in amendments to governing laws and federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Jeanne Goodenough, Division Chief, Office of the Attorney General at (208) 334-5537.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 13th day of August, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0501-0302

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is April 14, 2003.

The original text of the Temporary Rule was published in the Idaho Administrative
Bulletin, Volume 03-4, April 2, 2003, pages 15 through 28.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0501-0302

IDAPA 16
TITLE 05
CHAPTER 01

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

000. LEGAL AUTHORITY.

The Idaho Department of Health and Welfare and the Board of Health and Welfare have authority to promulgate rules governing the use and disclosure of Department records, according to Sections 39-242, 39-5403, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

02. Scope. These rules govern the use and disclosure of information maintained by the Department, in compliance with applicable state and federal laws, and federal regulations. ()

a. These rules apply to all Department employees, contractors, providers of services, and other individuals or entities who request or use that information. ()

b. These rules apply to all use and disclosure information, regardless of the form in which it is retained or disclosed. ()

c. All individuals and entities must comply with any standards in state or federal law or regulation that contain additional requirements, or are more restrictive than the requirements of these rules. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Department under the scope of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." To file a district court appeal, to file a complaint or to request a reconsideration to access health information, see Section 007 of these rules. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except state holidays. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. ()

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

05. Internet Website. The Department's internet website is found at <http://www2.state.id.us/dhw/>. ()

006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. ()

007. DISTRICT COURT APPEALS, COMPLAINTS AND REQUESTS FOR RECONSIDERATION.

The confidentiality of health information is defined in part by the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC 1320d, 110 Statutes at Large 2033-4, and 45 CFR Sections 160 and 164. ()

01. Appeals To District Court. Anyone who is aggrieved by a denial of disclosure or amendment of a public record may file an appeal in the appropriate district court in compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

02. Complaints To Privacy Officer. Individuals who are dissatisfied with a Department decision regarding confidential information may file a written complaint with the Department's Privacy Officer. Complaints must be submitted to the Department's Privacy Officer at the mailing address for the Department's business office. The Privacy Officer determines if a complaint is valid and makes a recommendation for its resolution to the Department within twenty-eight (28) days after the complaint is received. ()

a. Secretary of Health and Human Services (HHS). Complaints that involve the use and disclosure of health information may also be submitted to the Secretary of Health and Human Services at the following address: The U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201. ()

b. Time for filing complaints. Complaints must be filed within one hundred eighty (180) days from the date of the alleged violation. ()

03. Request For Reconsideration To Access Health Information. The individual or legal representative may submit a written request for reconsideration to the Privacy Officer if access to health information is denied. ()

a. The request for reconsideration must be postmarked no later than twenty-eight (28) days after notice of the denial was mailed. ()

b. The reconsideration will be conducted by another licensed health care professional who did not participate in the original decision. ()

c. The Department will notify the individual of the outcome of the review within twenty-eight (28) days after the request is received. ()

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. Authorization. A time-limited written consent for the disclosure of confidential information to a specific individual or entity outside the Department, and outside of normal business processes for providing Department services. ()

02. Confidential Information. Information that may only be used or disclosed as provided by state or federal law, federal regulation, or state rule. ()

03. Consent. Permission to use or disclose confidential information. Consent may be inferred from the circumstances. ()

04. Department. The Idaho Department of Health and Welfare. ()

05. Guardian Ad Litem. The person appointed by the court, according to law, to protect the interest of a minor or an incompetent in a case before the court. ()

06. Health Information. Identifying information about the past, present or future: ()

a. Physical or mental health or condition of an individual; ()

b. Provision of health care to an individual; or ()

c. Payment for health care for an individual. ()

07. Identifying Information. The name, address, social security number, or other information by which an individual could be identified. Information may also be identifying without a name, based on the context or circumstances of a disclosure. ()

08. Informal Representative. A person who is not a legal representative, but who is a relative, friend, or other person permitted to communicate with the Department on behalf of an individual. The individual or legal representative may give such permission verbally, in writing, or through his conduct. ()

09. Legal Representative. The parent of a minor, a guardian, conservator, attorney, or an individual who has an appropriate power of attorney. ()

10. Minimally Necessary. The information that is essential to provide benefits or services, and to perform normal business processes of the Department. ()

11. Need-To-Know. Confidential information that is necessary to provide benefits or services, and to perform normal business processes of the Department. ()

12. Psychotherapy Notes. Notes recorded in any format by a mental health professional that documents or analyzes the content of individual or group counseling sessions, and that are separated from the rest of the individual's medical record. The term "psychotherapy notes" excludes: ()

a. Medication prescription and monitoring; ()

b. Counseling session start and stop times; ()

- c. Types and frequencies of treatment furnished; ()
- d. Results of clinical tests; and ()
- e. Any summary of diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. ()

011. DEFINITIONS FOR VITAL STATISTICS.

The definitions provided in Subsection 011 of these rules apply to Vital Statistics and to the disclosure provisions of Section 39-270, Idaho Code. ()

01. Authorized Representative. An attorney, physician, funeral director, a legally designated agent, or an entity whose purpose for obtaining a vital record is to pay direct benefits to a person with a direct and tangible interest defined in Subsection 011.03 of this rule. ()

02. Certificate. A certificate of birth, death, stillbirth, marriage, or divorce, filed pursuant to law, excluding information contained in the statistical section of any record. ()

03. Individuals With A Direct And Tangible Interest. Individuals who have a direct and tangible interest in a vital record are: ()

a. The registrant and that person's spouse, children, parents, grandparents, grandchildren, siblings, or guardian; ()

b. A person who is conducting genealogical research on the person's own family; ()

c. Any other person who demonstrates that the record is needed for the determination or protection of that person's property right; ()

d. An authorized representative of any of these individuals; ()

e. The surviving next-of-kin if a deceased registrant has no other surviving family member listed in this subsection; ()

f. The Idaho Attorney General, and state and federal prosecuting attorneys, if such attorney submits an affidavit affirming that the record is necessary in the furtherance of the attorney's official law enforcement duties, is not reasonably available from another source, and that reasonable steps will be taken to preserve the confidentiality of the record; and ()

g. Any person, upon the order of an Idaho court of competent jurisdiction, where the court finds that disclosure of the record is necessary in the interests of justice. ()

04. Parent. Does not include a biological parent whose parental rights have been terminated. ()

05. Public Health. The science and art of: ()

a. Preventing disease, prolonging life, or promoting health and efficiency through organized community effort for the sanitation of the environment; ()

b. The control of communicable infections; ()

c. The education of the individual in personal hygiene; ()

d. The organization of medical and nursing services for the early diagnosis and preventive treatment of disease; and ()

e. The development of the social machinery to ensure everyone a standard of living adequate for the maintenance of health, so organizing these benefits as to enable every citizen to realize his birthright of health and longevity. ()

06. Putative Father. The biological father of a child as identified by himself, the natural mother, an adoption agency, or a court. ()

07. Registrar. The state Registrar as defined in Section 39-241(r), Idaho Code. The mailing and street address for the state Registrar is Bureau of Vital Records and Health Statistics, 450 W. State St., 1st Floor, PO Box 83720, Boise, Idaho 83720-0036. ()

08. Research. Organized scientific inquiry or examination of data in order to discover and interpret facts. ()

09. Statistical Purposes. The collection, analysis, interpretation and presentation of masses of non-identifying numerical information. ()

012. -- 049. (RESERVED).

**GENERAL CONSENT AND DISCLOSURE REQUIREMENTS
(Sections 050 through 199)**

050. CONSENT TO GATHER, USE AND DISCLOSE INFORMATION.

When individuals, legal representatives or informal representatives sign an application, they consent for the Department to gather, use and disclose information as needed for an individual to receive Department benefits or services. If none of these individuals provides a consent on an application, service may be denied. An informal representative may only consent to the disclosure of confidential information when permitted by these rules. ()

051. AUTHORIZATION FOR THE USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

An authorization for the use and disclosure of health and other confidential information must be in writing, and identify the individual who is the subject of the record. ()

01. Content Of Authorization. An authorization must be dated and signed by the individual or legal representative, and: ()

a. Identify the specific information involved; ()

b. State the duration of the authorization, defined by a specific date or the description of an event; ()

c. Identify the recipient of the information; ()

d. State the purpose for the authorization; ()

e. Specify any restrictions on use or disclosure of the information; and ()

f. Provide for revocation of the authorization. ()

02. Defective Authorization. An authorization must not be acted upon if the authorization has expired or has been revoked, or if any essential information is omitted or is false. ()

03. Psychotherapy Notes. Psychotherapy notes that are separate from the rest of an individual's record may not be used or disclosed without an authorization except to the originator of the notes for treatment or to defend the Department in a legal action brought by the individual. ()

04. Revocation Of An Authorization. An individual or legal representative may revoke an

authorization at any time by submitting a written request at any Department office. ()

05. Effect On Benefits And Services. An individual's refusal to provide an authorization does not affect the receipt of benefits or services the individual would otherwise receive. ()

06. Copy Of Authorization. The Department will provide a copy of the signed authorization to the individual or legal representative. ()

052. -- 074. (RESERVED).

075. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

Without a consent or an authorization, no one may use or disclose health or other confidential information except as provided in Section 100 of this chapter. With a consent or an authorization, confidential information will be used or disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the Department's business and the provision of benefits or services, subject to law and the exceptions listed in these rules. Recipients of information must protect against unauthorized disclosure or use of the information for purposes that are not specified in a consent or an authorization. Access to an individual's own records is governed by Section 125 of this chapter. Specific consent and disclosure requirements are identified in Sections 200 through 283 of these rules. ()

01. Identity. Any individual who requests to review, copy, restrict or amend confidential information, or to sign an authorization, must provide verification of identity, and where appropriate, present proof that the individual is a legal representative of the subject of the record. Except for verifications or requests for certified copies of vital records, requests submitted by mail must be notarized if necessary to identify the individual's signature. ()

02. Order Of Court Or Hearing Officer. If information is subpoenaed in a civil, criminal or administrative action, the Department will provide such information as would be disclosed with a public records request, without an order from the court or hearing officer. Alternatively, the Department may submit the record with a request for a review solely by the judge or hearing officer, and an order appropriately limiting its use by the parties. If Department staff have reason to believe that release of a record through a public records request may be detrimental to any individual, the Department may seek a protective order. ()

03. Referent. Unless the individual is a witness in litigation, identifying information must not be disclosed about an individual who reported concerns relating to any Department function, including: ()

- a. Fraud; ()
- b. Abuse, neglect or abandonment of a child; ()
- c. Abuse, neglect or abandonment of a vulnerable adult; and ()
- d. Concerns about the mental health of another. ()

04. Collateral Contact. Identifying information must not be disclosed about individuals who are not the subject of the record and who provide information to the Department in the ordinary course of business. ()

05. Alternative Communication. The Department, contractors and providers must comply with an individual's request that confidential information be communicated by alternative means of delivery unless it is administratively difficult to do so or the request is unreasonable. If approved, all information from a Department program will use the same alternative means of delivery after the request is received and recorded. ()

06. Restriction On Disclosure Of Health Information. ()

- a. An individual may request in writing that use or disclosure of health information be restricted. The Department will respond in writing, and may deny the request if: ()
 - i. Disclosure is required; ()

- ii. Necessary for the safety of the individual or others; ()
- iii. Necessary for the provision of services, benefits or payment; or ()
- iv. The restriction is unreasonable. ()

b. The uses and disclosures of confidential information are subject to a restriction after it is received and recorded by the Department. Department employees, contractors, and the individual may request the Department to terminate the restriction. The Department will notify the individual of its response to a request to terminate a restriction. ()

07. Discovery. Records will be provided only in response to valid discovery in any federal or state criminal, civil or administrative proceeding, as required by the Public Records Act, Section 9-343(3), Idaho Code. ()

08. "Do Not Re-Release" Records. If the Department receives health information that is marked "Do not re-release," that information will not be disclosed except to the subject of the record or legal representative, if allowed by these rules or applicable law. ()

076. -- 099. (RESERVED).

100. EXCEPTIONS TO REQUIREMENT FOR AUTHORIZATION.

Confidential information will be released without an authorization to individuals and entities in compliance with a court order, or if they are legally authorized to receive it. The following are exceptions to the requirement for an authorization: ()

01. Advocates And Guardians. Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for: ()

a. Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332; ()

b. Claims under laws administered by the VA as required by 38 USC Section 3301; and ()

c. Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3. ()

02. Police Functions. Police officers and sheriffs are entitled to receive confidential information for the purpose of conducting an investigation, or to determine whether to place an individual in protective custody, subject to limitations regarding substance abuse treatment. ()

03. Fugitives And Missing Persons. ()

a. A state or local law enforcement officer may receive the current address of any cash assistance recipient who is a fugitive felon, in compliance with Section 56-221, Idaho Code. ()

b. The following health information may be disclosed to a law enforcement officer for the purpose of identifying or locating a suspect, fugitive, material witness or missing person: ()

i. Name and address; ()

ii. Date and place of birth; ()

iii. Social security number; ()

- iv. Blood type and rh factor; ()
- v. Type of injury; ()
- vi. Date and time of treatment or death, if applicable; and ()
- vii. Distinguishing physical characteristics. ()
- c. DNA, dental records, or typing, samples or analysis of body fluids or tissue must not be disclosed. ()

04. Duty To Warn Or Report. Confidential information may be released without an authorization if necessary under a legal duty to warn or to report. ()

05. Department Business, Monitoring And Legal Functions. Department employees and contractors may use and disclose records as necessary to perform normal business functions, including health treatment, audit and quality improvement, investigation of fraud and abuse, establishment of overpayments and recoupment, public health, or other functions authorized by law. Information will be made available to state and federal auditors and compliance monitors. Confidential information will be provided to counsel as needed to evaluate, prepare for and represent the Department in legal actions. ()

06. Emergencies. Confidential information may be disclosed to qualified medical personnel to the extent necessary to respond to a medical emergency that requires immediate attention. ()

07. Multidisciplinary Staffing. Confidential information may be disclosed to employees of the Department, law enforcement, and other appropriate individuals to participate in a multidisciplinary team evaluation of child protection cases under Section 16-1609A, Idaho Code, or interdisciplinary Department staffing of services for an individual. All individuals who participate in such staffing must not redisclose the information and must comply with any other pertinent statute, rule or regulation. ()

08. Collaborative Staffing. Confidential information may be disclosed in staffing by the Department and other individuals or entities if all participants are involved with the same or similar populations and have an equal obligation or promise to maintain confidentiality. Disclosure of information in inter-agency staffing must be necessary to coordinate benefits or services, or to improve administration and management of the services. Confidential information may be disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the staffing. All individuals who participate in such staffing must not redisclose the information except in compliance with any other pertinent statute, rule or regulation. ()

09. Elected State Official. As provided by Section 16-1623(f), Idaho Code, any duly elected state official carrying out his official functions may have access to child protection records of the Department, and must not redisclose the information. ()

10. Child Protection Agency. A legally mandated child protection agency may provide information necessary to investigate a report of known or suspected child abuse or neglect, or to treat a child and family who are the subjects of the record. ()

11. Legally Authorized Agency. An agency will be provided appropriate information if the agency is legally responsible for or authorized to care for, treat or supervise a child who is the subject of the record. ()

12. Informal Representatives. Informal representatives may be permitted to receive and deliver information on behalf of an individual, and may be given health information if the informal representative is directly involved with the individual's care. Confidential information may be withheld in whole or part if professional staff determines that disclosure is not in the best interest of the individual, based on the circumstances and their professional judgement. The Department will not disclose information that is prohibited from being disclosed by these rules or any other legal requirement. ()

101. ABUSE, NEGLECT, OR DOMESTIC VIOLENCE.

Health information may be disclosed to a law enforcement officer if the victim of abuse, neglect, or domestic violence agrees to the disclosure. ()

01. Incapacity Of Victim. If the victim is unable to agree because of incapacity, health information will be disclosed if the officer states: ()

a. That the information is not intended to be used against the victim; and ()

b. That immediate enforcement activity would be materially and adversely affected by waiting for the victim's agreement. ()

02. Judgement Of Professional Staff. The victim must be promptly informed that a report to law enforcement has been or will be made unless in the judgement of professional staff: ()

a. Informing the victim would place him at risk of serious harm; or ()

b. The probable perpetrator of the abuse, neglect or domestic violence would be the recipient of the report, and disclosure would not be in the victim's best interest. ()

102. VICTIM OF OTHER CRIME.

Health information may be disclosed in response to a law enforcement official's request about a victim or suspected victim of a crime other than those listed in Section 101 of these rules, if the individual agrees to the disclosure. ()

01. Incapacity Of Victim Or Emergency Circumstance. If the individual is unable to agree because of incapacity or emergency circumstance, health information will be disclosed if the official states that the information is needed to determine whether a violation of law has occurred, and that it is not intended to be used against the individual. ()

02. Best Interest Of The Individual. The officer must also represent that immediate enforcement activity would be materially and adversely affected by waiting for the individual's agreement. Professional staff must agree that disclosure is in the best interest of the individual. ()

103. SERIOUS THREAT TO HEALTH OR SAFETY.

Subject to the restrictions in this rule, health information may be used or disclosed if necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. Disclosure must be based on actual knowledge or credible information from a person with apparent knowledge or authority. Disclosure will be made only to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. ()

01. Apprehension By Law Enforcement. Health information may be disclosed as necessary to law enforcement to identify or apprehend an individual. Disclosure is limited to an admission that an individual participated in a violent crime if it is reasonable to believe that serious physical harm has been caused to the victim. ()

02. Escape From Law Enforcement. Health information may be disclosed as necessary for law enforcement to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or lawful custody. ()

03. Prohibition On Disclosure. Disclosure of an admission of participation in a violent crime is prohibited if the information is learned in the course of treatment to affect the individual's tendency to commit the criminal conduct, or through a request by the individual to initiate such treatment. ()

104. REPORTING OF CRIME ON PREMISES.

Health information may be disclosed to a law enforcement official if the information constitutes evidence of criminal conduct that occurred on the Department's premises. ()

105. REPORTING CRIME IN EMERGENCIES.

If a Department employee is providing emergency health care off the Department's premises, health information may be disclosed if necessary to alert law enforcement to a crime; the location of the crime or victim; and the identity, description and location of the perpetrator. If the crime involves abuse, neglect or domestic violence, the requirements of Section 101 of this chapter apply. ()

106. -- 124. (RESERVED).

125. ACCESS TO AN INDIVIDUAL'S OWN RECORD.

An individual who is at least fourteen (14) years old, or a legal representative, may review and obtain a copy of Department records that pertain to the individual, subject to the exceptions listed in Subsections 125.01 through 125.04 of these rules. Requests must be in writing, identifying the individual whose record is sought, and the record or information requested. The principles of disclosing only minimally necessary information on a need-to-know basis do not apply to a request for an individual's own records. The following information must not be disclosed: ()

01. Children's Mental Health. Records of a child's mental health services must not be disclosed to the child when a physician or other mental health professional has noted that disclosure would be damaging to the child, unless access is ordered by a court according to Section 16-2428, Idaho Code. ()

02. Legal Action. No disclosure will be made to an individual of information compiled in an ongoing investigation, that is exempt from disclosure, or that relates to adoption. Information compiled in reasonable anticipation of litigation that is not otherwise discoverable must not be disclosed. Information compiled for use in a civil, criminal, or administrative proceeding to which the individual is a party must not be disclosed except in compliance with valid discovery. ()

03. Clinical Laboratories. There will be no disclosure of information maintained by a clinical laboratory except as authorized by the provider who ordered the test or study. ()

04. Confidential Information. Health and other confidential information will not be disclosed to the individual if a licensed professional in an appropriate discipline determines that disclosure is likely to endanger the life or physical safety of the individual or another person. Disclosure to a legal representative will be denied if there is a professional determination that access by the representative is likely to cause substantial harm to the subject of the record or another person. ()

126. -- 149. (RESERVED).

150. AMENDMENT OF RECORD.

Unless otherwise provided by law, individuals may request in writing to amend the content of a record created by the Department. The Department will respond in writing within ten (10) days, granting or denying the amendment. A record created by a third party will not be amended by the Department. ()

01. Amendment Of Health Information. Once an amendment regarding health information is approved and recorded, the Department will provide the amended health information when the record is disclosed in the future. If an amendment of health information is denied, the individual may provide a written response, which the Department may rebut in writing to the individual. Upon request, documentation of all the records involved in the denial will be provided whenever that information is disclosed in the future. ()

02. Updating Identifying Information. Name and address changes, and similar updates of information in Department files will be made without using the amendment process. ()

151. -- 174. (RESERVED).

175. REPORT OF DISCLOSURES OF HEALTH INFORMATION.

01. Documented Disclosures. The following disclosures of identifying health information for a purpose other than providing health treatment, payment or operations will be documented: ()

a. Required by law; ()

- b. Public health activities; ()
- c. Related to victims of abuse, neglect or domestic violence; ()
- d. Health care oversight; ()
- e. Judicial and administrative proceedings; ()
- f. Correctional institutions or custodial law enforcement situations; ()
- g. Coroners, medical examiners, and funeral directors; ()
- h. Organ or tissue donations; ()
- i. Research; ()
- j. To avert a serious threat of health and safety; and ()
- k. Specialized government functions such as national security or intelligence. ()

02. Documentation Of Disclosure. Documentation will identify when the disclosure occurred, to whom, what information was disclosed and for what purpose. ()

03. Maintenance Of Documentation. The Department maintains documentation of these disclosures of health information for six (6) years. ()

04. Request For Report Of Disclosures. An individual or legal representative may receive one (1) free report of disclosures per calendar year for six (6) years beginning April 14, 2003. Additional requests for a report of disclosures are processed as public record requests, and may be subject to fees. ()

05. Pending Investigation. The Department must suspend reporting of a disclosure of health information at the request of any federal, state or local entity that is conducting an investigation related to the oversight of health care, illegal discrimination, licensing, certification or accreditation. If the request is verbal, the suspension will terminate after thirty (30) days unless the request is renewed in writing. ()

176. -- 189. (RESERVED).

190. RECORDS OF DECEDENTS.

Records of decedents are confidential for as long as the Department maintains the records, except as needed by coroners or medical examiners, funeral directors, and law enforcement if there is suspicion that the death was the result of criminal conduct. While records are maintained, the same confidentiality requirements apply to the personal representative of the estate or other legal representative of the deceased individual. ()

191. DATA FOR RESEARCH OR OTHER PURPOSES.

Records that contain non-identifying information may be disclosed for Department approved research or other purposes without a written authorization. ()

192. -- 199. (RESERVED).

SPECIFIC CONSENT AND DISCLOSURE REQUIREMENTS
(Sections 200 through 283)

200. ABORTION FOR MINORS.

Consent for an abortion for a minor is governed by Section 18-609A, Idaho Code. ()

201. ABUSE, NEGLECT OR DOMESTIC VIOLENCE.

Abuse, abandonment or neglect of a minor is required to be reported in compliance with Section 16-1619, Idaho Code. Abuse, neglect or exploitation of adults is governed by Section 39-5303, Idaho Code. An exception to the physician/patient privilege for domestic violence is contained in Section 9-203, Idaho Code. ()

202. ADOPTION.

Disclosure of adoption records is governed by the provisions of Sections 9-340B(6), 16-1501, 39-258, 39-259A, and 39-7501 through 39-7905, Idaho Code. Consent to adoption by children who are more than twelve (12) years old, by parents and by others, is governed by Section 16-1504, Idaho Code. ()

203. -- 209. (RESERVED).

210. CHILD PROTECTION.

Unless allowed by these rules or other provision of law, the Department will disclose information from child protection records in its possession upon a court order obtained in compliance with Subsection 075.02 of these rules. Disclosure of Department records under the Child Protective Act is governed by Section 16-1623(f), Idaho Code. Court records of Child Protective Act proceedings are governed by Section 16-1621, Idaho Code. Pertinent federal laws and regulations include 42 USC 5106 and 45 CFR 134.20. Information regarding child fatalities or near fatalities is required to be made public by 42 USC 5106a(b)(2)(A)(vi). ()

211. CHILDREN'S MENTAL HEALTH.

Consent to voluntary treatment for a minor with serious emotional disturbance, emergency and involuntary treatment are governed by the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. Section 16-2428, Idaho Code, describes requirements for confidentiality. ()

212. -- 219. (RESERVED).

220. HARD TO PLACE CHILDREN.

The Department disseminates information to prospective adoptive families and families who wish to be appointed legal guardians of a child in the state's custody, as to the availability of hard-to-place children, adoption and guardianship procedures, and the existence of financial aid to adoptive families and guardians of hard-to-place children, in compliance with Section 56-804, Idaho Code. ()

221. HOSPITAL RECORDS.

Records of hospitalization in a state facility are governed by Sections 39-1392b, 39-1392e and 39-1394, Idaho Code. ()

222. HUMAN RESOURCES.

Disclosure of employee information is governed by Section 9-340C(1), Idaho Code. ()

223. INFANT/TODDLER PROGRAM.

Consent to early intervention services and confidentiality of records that relate to the Infant/Toddler program are governed by the Individuals with Disabilities Education Act (IDEA), 20 USC 1414(a)(1)(C) and (c)(3), and 20 USC 1415(b)(3); the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g; and 34 CFR 303.400, 34 CFR 303.500 and 34 CFR part 99. ()

224. -- 229. (RESERVED).

230. MEDICAL CARE.

Consent to apply for services or treatment is governed by Chapter 43, Title 39, Idaho Code, for hospital, medical, dental or surgical care, treatment or procedure. ()

231. -- 239. (RESERVED).

240. MENTAL ILLNESS.

Records of assessment, treatment, and commitment or hospitalization of individuals with mental illness are governed

by Sections 66-318, 66-348, 66-355, 66-329(i), 66-337, and 66-339, Idaho Code. ()

241. MINOR'S CONSENT REGARDING INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASE.

Section 39-3801, Idaho Code, governs consent to treatment for infectious, contagious or communicable disease by a minor who is at least fourteen (14) years of age. ()

242. -- 249. (RESERVED).

250. SUBSTANCE ABUSE.

Consent to treatment and confidentiality of alcohol and drug abuse patient records are governed by 42 CFR 2.12 through 2.67, and Sections 37-2743, 37-3102, 39-307, and 39-308, Idaho Code. ()

01. Drug Abuse. A medical practitioner will not disclose identifying information, treatment or request for treatment, to any law enforcement officer or agency or in any proceeding, in compliance with Sections 37-2743 and 37-3102, Idaho Code. ()

02. Age Sixteen And Over. Information regarding substance abuse treatment of an individual who is at least age sixteen (16) years old will not be disclosed to a parent or guardian unless authorized by the individual, in compliance with Section 37-3102, Idaho Code, and 42 CFR 2.14. Individuals who are at least sixteen (16) years old may consent to substance abuse treatment. ()

251. -- 259. (RESERVED).

260. TERMINATION OF PARENTAL RIGHTS.

Disclosure of information regarding the termination of parental rights is governed by Section 16-2013, Idaho Code. ()

261. -- 269. (RESERVED).

270. VENEREAL DISEASES.

Disclosures of health information pertaining to the control of venereal diseases, including Human Immunodeficiency Virus (HIV), is governed by Title 9, Chapter 6, Idaho Code. ()

271. -- 279. (RESERVED).

280. VITAL STATISTICS - VERIFICATION OF DATA.

The Registrar will only confirm or deny the presence and accuracy of data already known to a governmental agency that requests information from a vital record. Such verifications may be conducted by telephone for Idaho state agencies. Other requests for verification require a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. ()

281. VITAL STATISTICS - DISCLOSURE FOR RESEARCH, PUBLIC HEALTH OR STATISTICAL PURPOSES.

Upon agreement in writing to such conditions as the Registrar may impose, the Registrar may permit the use of data from vital statistics records for research, public health or statistical purposes. The Registrar may deny a request for access to identifying information if the Registrar determines that the benefits would be outweighed by the possible adverse consequences to those individuals whose records would be used. ()

282. VITAL STATISTICS - REGISTRY OF PUTATIVE FATHERS.

Except by Idaho court order or in accordance with the provisions of Section 16-1513, Idaho Code, information acquired by the confidential registry of putative fathers will not be disclosed. ()

283. VITAL STATISTICS - PROCEDURES FOR REQUESTING INFORMATION.

Individuals who request access to, information from, or copies of vital records must present a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such

other information as the Registrar requests. Minors who are less than fourteen (14) years old may receive certified copies of vital records that pertain to them if they present the required information. ()

01. Expedited Copy. An expedited certified copy of a vital record may be issued using proprietary telecommunications services. ()

02. Certified Copy. When a certified copy is issued, it is certified as a true copy or abstract of the original vital record by the officer who has custody of the record. The certified copy will include the date issued, the Registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Full or short form certified copies of vital records may be made by mechanical, electronic or other reproduction processes. ()

284. WOMEN, INFANTS AND CHILDREN (WIC) PROGRAM.
WIC information may be used and disclosed only for the purpose of establishing the eligibility of WIC applicants and participants for health and welfare programs. ()

285. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM
DOCKET NO. 16-0612-0301
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 56-201 through 56-233, 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 15, 2003.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This rule is needed in order for the Department to comply with the required three point five percent (3.5%) holdback imposed by the Office of the Governor. It was previously published as a temporary rule in the February, Idaho Administrative Bulletin and there are no changes to the text. The rule change is to increase the sliding fee schedule found in IDAPA 16.06.12.307 by six percent (6%).

In February 2003, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of January 1, 2003. The temporary rule was published in the Idaho Administrative Bulletin, Volume 03-2, February 5, 2003, pages 17 through 19. With this publication the Department is initiating proposed rulemaking.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. The rule is being promulgated in order to implement the three point five percent (3.5%) holdback imposed by the Office of the Governor. Section 56-1007, Idaho Code, authorizes the Department to charge and collect reasonable fees. The fee may be determined by a sliding fee scale, which this rule does.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is necessary to comply with the three point five (3.5%) holdback.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Cheryl Bowers at (208) 334-5733.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 14th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
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Boise, Idaho 83720-0036
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Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is January 1, 2003.

The original text of the Temporary Rule was published in the Idaho Administrative
Bulletin, Volume 03-2, February 5, 2003, pages 17 through 19.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-0301

307. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. (7-1-99)

01. Poverty Rates. Poverty rates will be the established rates published annually in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (7-1-99)

02. Calculating Family Payment. Families ~~shall~~ must pay the provider for child care services. Family income for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate, less the amount calculated using the sliding fee schedule listed in Table 307.03. (7-1-99)()

03. Maximum Income And Sliding Fee Schedules:

FAMILY CO-PAYMENT REQUIREMENTS - ICCP SLIDING FEE SCHEDULE									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$0 - \$499	47%	47%	47%	47%	47%	47%	47%	47%	47%
\$500 - \$599	51%	47%	47%	47%	47%	47%	47%	47%	47%
\$600 - \$699	51%	51%	47%	47%	47%	47%	47%	47%	47%
\$700 - \$799	51%	51%	51%	47%	47%	47%	47%	47%	47%
\$800 - \$899	4521%	51%	51%	51%	47%	47%	47%	47%	47%
\$900 - \$999	4521%	51%	51%	51%	51%	47%	47%	47%	47%
\$1,000 - \$1,099	4521%	51%	51%	51%	51%	47%	47%	47%	47%
\$1,100 - \$1,199	306%	4521%	51%	51%	51%	51%	47%	47%	47%
\$1,200 - \$1,299	306%	4521%	51%	51%	51%	51%	51%	47%	47%
\$1,300 - \$1,399 56	606%	4521%	4521%	51%	51%	51%	51%	57%	47%
\$1,357 - \$1,399	100%	21%	21%	11%	11%	11%	11%	7%	7%
\$1,400 - \$1,499	100%	306%	4521%	51%	51%	51%	51%	51%	47%

FAMILY CO-PAYMENT REQUIREMENTS - ICCP SLIDING FEE SCHEDULE									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$1,500 - \$1,599	100%	30%	+15%	15%	5%	5%	5%	5%	5%
\$1,600 - \$1,699	100%	60%	30%	15%	5%	5%	5%	5%	5%
\$1,700 - \$1,799	100%	60%	30%	+15%	15%	5%	5%	5%	5%
\$1,707 - \$1,799	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>	<u>21%</u>	<u>11%</u>	<u>11%</u>	<u>11%</u>	<u>11%</u>
\$1,800 - \$1,899	100%	100%	30%	15%	15%	5%	5%	5%	5%
\$1,900 - \$1,999	100%	100%	30%	30%	+15%	5%	5%	5%	5%
\$2,000 - \$2,099	100%	100%	60%	30%	15%	15%	5%	5%	5%
\$2,057 - \$2,099	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>	<u>21%</u>	<u>11%</u>	<u>11%</u>	<u>11%</u>
\$2,100 - \$2,199	100%	100%	100%	30%	15%	15%	5%	5%	5%
\$2,200 - \$2,299	100%	100%	100%	30%	15%	+15%	15%	5%	5%
\$2,300 - \$2,399	100%	100%	100%	60%	30%	15%	15%	5%	5%
\$2,400 - \$2,499	100%	100%	100%	60%	30%	15%	+15%	15%	5%
\$2,407 - \$2,499	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>	<u>21%</u>	<u>21%</u>	<u>11%</u>
\$2,500 - \$2,599	100%	100%	100%	100%	30%	15%	15%	15%	5%
\$2,600 - \$2,699	100%	100%	100%	100%	60%	30%	15%	+15%	15%
\$2,700 - \$2,799	100%	100%	100%	100%	60%	30%	15%	15%	15%
\$2,757 - \$2,799	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>	<u>21%</u>	<u>21%</u>
\$2,800 - \$2,899	100%	100%	100%	100%	100%	30%	15%	15%	+15%
\$2,900 - \$2,999	100%	100%	100%	100%	100%	30%	30%	15%	15%
\$3,000 - \$3,099	100%	100%	100%	100%	100%	60%	30%	15%	15%
\$3,100 - \$3,199	100%	100%	100%	100%	100%	60%	30%	30%	15%
\$3,107 - \$3,199	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>	<u>21%</u>
\$3,200 - \$3,299	100%	100%	100%	100%	100%	100%	30%	30%	15%
\$3,300 - \$3,399	100%	100%	100%	100%	100%	100%	60%	30%	15%
\$3,400 - \$3,499	100%	100%	100%	100%	100%	100%	60%	30%	30%
\$3,457 - \$3,499	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>	<u>21%</u>
\$3,500 - \$3,599	100%	100%	100%	100%	100%	100%	100%	30%	30%
\$3,600 - \$3,699	100%	100%	100%	100%	100%	100%	100%	30%	30%
\$3,700 - \$3,799	100%	100%	100%	100%	100%	100%	100%	60%	30%
\$3,800 - \$3,899	100%	100%	100%	100%	100%	100%	100%	60%	30%
\$3,807 - \$3,899	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>36%</u>

FAMILY CO-PAYMENT REQUIREMENTS - ICCP SLIDING FEE SCHEDULE									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$3,900 - \$3,999	100%	100%	100%	100%	100%	100%	100%	100%	3 0 6%
\$4,000 - \$4,099	100%	100%	100%	100%	100%	100%	100%	100%	6 0 6%
\$4,100 - \$4,1 99 56	100%	100%	100%	100%	100%	100%	100%	100%	6 0 6%
\$4,2 00 157 - \$4,299	100%	100%	100%	100%	100%	100%	100%	100%	100%
<p>* Maximum income for ICCP benefits: \$1,356 for household of 2 \$1,706 for household of 3 \$2,056 for household of 4 \$2,406 for household of 5 \$2,756 for household of 6 \$3,106 for household of 7 \$3,456 for household of 8 \$3,806 for household of 9 \$4,156 for household of 10</p>									

*Maximum Income (Or Eligibility For Payment) Based On 150% Of Poverty (1998 Poverty Tables).

(7-1-99)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0613-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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 Sections 56-201 and 56-202(b), 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:

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July Administrative Bulletin, Volume 03-7, page 39.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mardell Nelson at (208) 334-5688.

DATED this 19th day of August, 2003.

Sherri Kovach
Administrative Procedures Coordinator
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IDAPA 16, TITLE 06, CHAPTER 13

RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, page 39.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0613-0302

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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 Sections 56-201 and 56-202(b), 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.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July Administrative Bulletin, Volume 03-7, pages 40 through 46.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mardell Nelson at (208) 334-5688.

DATED this 19th day of August, 2003.

Sherri Kovach
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IDAPA 16, TITLE 06, CHAPTER 13

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The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, pages 40 through 46.

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Subjects Affected Index

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.04 - Phytosanitary And Post-Entry Certification Rules

Docket No. 02-0604-0301 (Fee Rule)

500. Fees And Charges. 19

02.06.06 - Rules Governing The Planting Of Beans (Phaseolus SPP.) In Idaho

Docket No. 02-0606-0301 (Fee Rule)

550. Fees And Charges. 22

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.03 - Rules Governing Modular Buildings

Docket No. 07-0303-0301

017. Insignia. 26

018. Fee Schedule. 27

07.03.08 - Rules Governing Commercial Coaches

Docket No. 07-0308-0301

017. Insignia. 28

07.03.12 - Rules Governing Manufactured Or Mobile Home Installations

Docket No. 07-0312-0301

004. Adoption And Incorporation By Reference. 30

07.05.01 - Rules Of The Public Works Contractors License Board

Docket No. 07-0501-0301

000. Legal Authority. 31

001. Title. 32

002. Intent. 32

003. Written Interpretations. 32

004. Administrative Appeals. 32

005. -- 009. (Reserved). 32

010. Definitions. 32

011. -- 099. (Reserved). 33

100. Board Office -- Location, Hours, Mailing Address, Telephone Number, Facsimile Number. 33

101. Meetings. 33

102. Communication. 33

103. Petitions. 33

104. Form And Content Of Petition. 33

105. License Renewal - Filing Deadlines; Petitions For Extension Of Time To File; Lapsed Licenses.

34

106. Special Provisions Covered In A Petition To Change Or Add Types Of Construction. 34

107. Records. 35

108. Review. 35

109. Notice. 35

Statements.

110. Application For Licensure - Documentation; Appraisals; References; Bonding; And Financial
36

111. Complaints. 37

112. -- 199. (Reserved). 37

200. Limitations. 37

201. Fees. 38

203. -- 299. (Reserved). 39

300. Business Organization - Changes In Organization Or Structure - Members Of Joint Ventures -

Changes For Reasons Other Than Death. 41	
301. -- 399. (Reserved).....	41
400. Certificates - Display And Possession.	41
401. License Number On Bids.	42
402. Changes In License Certificate.	42
403. -- 499. (Reserved).....	42
500. Proceedings For Disciplinary Actions.....	42
501. Forms.	42
502. Technicalities Of Form.....	42
503. Hearings.	42
504. -- 599. (Reserved).....	43
600. Construction Manager Examinations.	43
601. -- 999. (Reserved).....	43

**07.07.01 - Rules Governing Installation Of Heating, Ventilation,
And Air Conditioning Systems**

Docket No. 07-0701-0301 (Fee Rule)	
000. Legal Authority.....	45
001. Title And Scope.	45
002. Written Interpretations.....	45
003. Administrative Appeals.....	45
004. Incorporation By Reference.	45
005. Office -- Office Hours -- Mailing Address And Street Address.	45
006. Filing Of Documents.	45
007. Public Records Act Compliance.....	45
008. Changes In Name And Address -- Address For Notification Purposes.....	45
009. Meetings.....	46
010. Definitions.	46
011. -- 019. (Reserved).....	46
020. HVAC Contractor And HVAC Journeyman Applications For Examination And Certificates Of Competency, And Registration Of Apprentices. 46	
021. HVAC Contractor Certificate Of Competency.	46
022. HVAC Specialty Contractor Certificate Of Competency.	47
023. HVAC Journeyman Certificates Of Competency.	48
024. HVAC Apprentice Requirements For Registration.	48
025. -- 049. (Reserved).....	48
050. HVAC Permits.	48
051. -- 059. (Reserved).....	49
060. Required Inspections.	49
061. HVAC Installation Permit And Inspection Fees - Prior To Commencement Of Work.	49
062. HVAC Installation Permit And Inspection Fees - After Commencement Of Work.....	50
063. -- 999. (Reserved).....	50

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.01.08 - Miscellaneous Rules

Docket No. 08-0108-0301	
000. Legal Authority.	52
001. Title And Scope.	52
002. Written Interpretations.....	52
003. Administrative Appeal.	52
004. Incorporation By Reference.	52
005. Office -- Office Hours -- Mailing Address And Street Address.	52
006. Public Records Act Compliance.....	52

100. Possession, Consumption, And Sale Of Alcoholic Beverages At Public Higher Education Institutions. 52

08.02.02 - Rules Governing Uniformity

Docket No. 08-0202-0302 (Fee Rule)

004. Incorporation By Reference.	54
007. Definitions.	54
013. Certification Of Teachers Trained In Foreign Institutions.	55
014. Certificates Issued To Applicants From Regionally Accredited Institutions.	55
015. Idaho Interim Certificate.	55
016. Idaho Educator Credential.	56
017. Content, Pedagogy And Performance Assessment For Certification.	59
018. Standard Elementary Certificate.	59
019. Early Childhood / Early Childhood Special Education Blended Certificate.	60
020. Standard Secondary Certificate.	61
021. Endorsements.	62
022. Endorsements A - D.	62
023. Endorsements E - L.	63
024. Endorsements M - Z.	65
025. Native American Language (Section 33-1280, Idaho Code).	66
026. Administrator Certificate.	66
027. Pupil Personnel Services Certificate.	68
028. Exceptional Child Certificate.	69
029. Consulting Teacher Endorsement.	70
030. Supervisor/Coordinator Of Special Education Endorsement.	70
031. -- 033. (Reserved).	70
034. Certification Standards For Professional-Technical Educators.	70
035. Degree Based Professional-Technical Certification.	70
036. Industry Based Professional-Technical Certification.	71
037. -- 038. (Reserved).	73
041. -- 059. (Reserved).	73
060. Application Procedures / Professional Development.	73
061. -- 065. (Reserved).	74
066. Fees.	74
067. -- 089. (Reserved).	74
100. Official Vehicle For Approving Teacher Education Programs.	74
130. School Facilities.	75

Docket No. 08-0202-0303

071. -- 075. (Reserved).	76
076. Code Of Ethics For Idaho Professional Educators (Sections 33-1208 And 33-1209, Idaho Code). .	
76	
077. Definitions For Use With The Code Of Ethics For Idaho Professional Educators (Sections 33-1208 And 33-1209, Idaho Code). 80	
078. -- 079. (Reserved).	81

Docket No. 08-0202-0304

031. -- 038. (Reserved).	83
039. Limited Approval Alternatives (Expires July 1, 2006).	83
040. Misassignments - Grandfathering (Expires July 1, 2006).	83
041. Alternative Certification (Expires July 1, 2006).	84
042. Alternate Routes To Certification (Effective July 1, 2006).	85
043. Alternative Authorization – Teacher To New Certification (Effective July 1, 2006).	85

044. Alternative Authorization – Content Specialist (Effective July 1, 2006)..... 86

045. Para-Educator To Teacher (Effective July 1, 2006)..... 86

08.02.03 - Rules Governing Thoroughness

Docket No. 08-0203-0301

105. Graduation From High School..... 89

106. (Reserved). 89

107. High School Graduation Standards (Effective July 1, 2000). 89

111. Assessment In The Public Schools..... 90

112. Accountability. 93

113. Rewards. 96

114. Failure To Meet Adequate Yearly Progress (AYP). 97

115. Data Collection. 97

116. -- 127. (Reserved). 97

128. Curricular Materials Selection (Sections 33-118; 33-118a, Idaho Code)..... 98

129. Communication. 98

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.01 - Rules Governing Horse Racing

Docket No. 11-0401-0301

130. Stake Races..... 100

11.04.02 - Rules Governing Simulcasting

Docket No. 11-0402-0301

003. Administrative Appeals..... 104

004. Incorporation By Reference. 104

005. Mailing Address And Office Hours. 104

006. Public Records Availability. 104

007. General Jurisdiction. 104

008. -- 009..... (Reserved). 104

010. Definitions. 104

030. Licenses For Simulcast Operators. 107

031. -- 034. (Reserved). 108

035. Duties Of Simulcast Operator..... 108

036. Out-Of-State And Interstate Wagering. 109

042. Authorization For Advanced Deposit Wagering. 110

043. Establishing An Account. 111

044. Operation Of An Account. 112

045. -- 049. (Reserved)..... 113

050. Multi-Jursidictional Simulcasting And Interactive Wagering Totalizator Hub - Advance Deposit
Wagering Rules Apply. 113

052. Total Take-Out Rates For Non-Merged Pools. 115

053. Where The Wager Is Considered To Have Been Made. 115

055. -- 059. (Reserved)..... 116

060. Distribution Of Receipts From Multi-Jurisdictional Simulcasting And Interactive Wagering
Totalizator Hubs. 116

061. -- 999. (Reserved)..... 117

11.05.01 - Rules Governing Alcohol Beverage Control

Docket No. 11-0501-0301

010. Definitions. 119

11.10.01 - Rules Governing The ILETs - Idaho Law Enforcement Teletypewriter System

Docket No. 11-1001-0301

000. Legal Authority.....	121
001. Title And Scope.....	121
003. Administrative Appeals.....	121
004. Incorporation By Reference.....	121
006. Public Record Act Compliance.....	121
007. -- 009. (Reserved).....	122
010. Definitions.....	122
011. (Reserved).....	123
012. Executive Officer Of The Board.....	123
013. ILETS Board -- Meetings And Quorum.....	123
014. ILETS Board -- Powers And Duties, Chairman, And Ad Hoc Advisory Committees.....	124
015. ILETS Board -- Resignations And Replacements Notification.....	124
016. ILETS Network.....	124
017. Agency Access To ILETS.....	125
018. User Access Fees.....	126
019. Adjusted Access Fees During Pilot Projects.....	127
020. User Responsibilities.....	127
021. Information Access And Dissemination.....	128
022. -- 023. (Reserved).....	128
024. ILETS Security.....	128
025. -- 027. (Reserved).....	131
028. User Agency Sanctions.....	131
029. -- 999. (Reserved).....	131

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - Rules Governing Public Safety

Docket No. 13-0102-0301

002. Written Interpretations.....	133
003. Administrative Appeal.....	133
004. Incorporation By Reference.....	133
005. Office -- Office Hours -- Mailing Address And Street Address.....	133
010. Definitions.....	133
011. -- 099. (Reserved).....	133
100. Hunter Education.....	133
101. -- 999. (Reserved).....	133

13.01.04 - Rules Governing Licensing

Docket No. 13-0104-0301

303. Handicapped Persons Motor Vehicle Hunting Permits.....	135
304. Handicapped Archery Permit.....	136
500. Nonresident Deer And Elk Tag Outfitter Set-Aside.....	136
506. Deer And Elk Outfitter Allocated Tag.....	137
507. -- 599. (Reserved).....	138
600. Nonresident Deer And Elk Tag Quotas.....	138
602. Special Operation Iraqi Freedom Refund And Rain Check.....	140
603. -- 699. (Reserved).....	141
700. Special Bighorn Sheep Permit/Tag.....	141
701. -- 799. (Reserved).....	142
800. Bighorn Sheep Lottery Permit/Tag.....	142

13.01.08 - Rules Governing The Taking Of Big Game Animals In The State Of Idaho

Docket No. 13-0108-0301

260.	Permits For Controlled Hunts	145
410.	Unlawful Methods Of Take	148
421.	Mandatory Deer And Elk Report Requirements.....	151
13.01.12 - Rules Governing Commercial Fishing In The State Of Idaho		
Docket No. 13-0112-0301		
000.	Legal Authority.....	158
001.	Title And Scope	158
002.	Written Interpretations.....	158
003.	Administrative Appeals.....	158
004.	Incorporation By Reference	158
005.	Office -- Office Hours -- Mailing Address And Street Address.	158
006.	-- 009. (Reserved).....	158
010.	Definitions.	158
011.	-- 099. (Reserved).....	159
100.	Licenses, Tags And Permits.....	159
500.	Commercial Gear And Methods Of Take For Fish Or Crustacea.....	160
700.	Commercial Fishing Areas.....	160

IDAPA 15 - OFFICE OF THE GOVERNOR**IDAHO COMMISSION ON AGING****15.01.20 - Rules Governing Area Agency On Aging (AAA) Operations**

Docket No. 15-0120-0301		
002.	Written Interpretation.....	163
003.	Administrative Appeals.....	163
004.	-- 009. (Reserved).....	163
010.	Definitions.	163
011.	-- 019. (Reserved).....	164
020.	Planning And Service Area (Psa) Designation.....	164
021.	Aaa.....	164
022.	Aaa Budget Forms And Revisions.....	165
023.	-- 040. (Reserved).....	165
042.	Contract Management Requirements.....	165
043.	-- 050. (Reserved).....	167
051.	Area Advisory Councils On Aging.....	167
052.	Area Plans.....	168
053.	Service Priority And Appeals.....	168
054.	Eligibility.....	168
055.	Aaa Assessments Of Providers.....	168
056.	Reporting Requirements.....	168
057.	Civil Rights.....	169
058.	-- 065. (Reserved).....	169
066.	Financial Management.....	169
067.	-- 999. (Reserved).....	169

IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**15.02.30 - Business Enterprise Program**

Docket No. 15-0230-0302		
004.	Incorporation By Reference.....	170
006.	Public Records Act Compliance.....	171
100.	Setting Aside Of Funds.....	171

DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION
15.04.01 - Rules Of The Division Of Human Resources And Personnel Commission

Docket No. 15-0401-0301	
001.	Title, Scope, And Enforcement..... 173
003.	Citation Of Rules..... 174
Commission. 004.	Address And Phone Numbers Of The Division Of Human Resources And Idaho Personnel 174
007.	Designation Of Officers..... 174
008.	Applicability To Health Districts..... 174
009.	Duties Of The Administrator..... 174
010.	Definitions..... 174
020.	Veterans Preference..... 179
022.	Prohibited Questions..... 179
024.	Conflict Of Interest And Personal Conduct..... 180
025.	Nepotism..... 180
026.	Dual Employment..... 180
027.	-- 039. (Reserved)..... 180
040.	Nonclassified Employees Subject To Classified Service Subsequent To April 5, 1985..... 180
041.	-- 049. (Reserved)..... 180
050.	Consultants And Persons Employed Under Independent Contract..... 181
051.	-- 059. (Reserved)..... 181
060.	Adoption Of Classification Schedule..... 181
063.	Review Of Classification Schedule..... 181
065.	Approval Of New, Revised And Deleted Classifications..... 181
066.	Abolishment Of Positions..... 181
067.	Reclassification Of Positions..... 181
068.	Violations..... 182
069.	(Reserved)..... 182
070.	Compensation Of Employees..... 182
071.	Compensation Plan Reviews..... 183
072.	Operation Of Compensation Plan..... 183
073.	Calculation Of Pay..... 184
074.	Assignment Of Hay Evaluation Points..... 185
075.	Shift Differential..... 186
076.	Alternative Work Schedules And Locations..... 186
077.	Bonuses..... 186
078.	-- 079. (Reserved)..... 187
082.	Methods Of Recruitment..... 187
083.	(Reserved)..... 187
084.	Announcement Of Recruitment..... 187
085.	Content Of Announcements..... 187
086.	Applications..... 187
087.	Denial Of Applications..... 188
088.	(Reserved)..... 188
089.	Location Of Examinations..... 188
093.	Conduct And Rating Of Examinations Including Veterans' Preference Points..... 189
095.	Notice And Record Of Results Of Examination..... 189
096.	Review And Appeal..... 189
097.	Alternative Examination Process For Persons With Disabilities..... 190
101.	Types Of Eligibility Registers..... 190
102.	Placement On Register..... 191
103.	Duration Of Eligibility Registers..... 191

104.	Removal Of Names.....	191
107.	Revision Of Classification Specifications.....	192
108.	(Reserved).....	192
109.	Certification And Selection.....	192
110.	Number Of Names On Register.....	193
111.	Adequate Registers.....	193
112.	Selective Certification.....	193
113. -- 118.	(Reserved).....	193
119.	Appointments, Reinstatements, Transfers, And Resignations.....	193
120.	Limited Service Appointments.....	194
121.	Seasonal Appointment.....	194
122.	Temporary Appointments (Non-Classified).....	194
123.	Project-Exempt Appointments (Non-Classified).....	195
125.	Reinstatements.....	195
125.	Transfers.....	195
126.	Resignation.....	196
127. -- 128.	(Reserved).....	196
129.	Acting Appointment To A Position.....	196
130.	Limitation On Length Of Appointment.....	196
131.	Salary.....	197
132.	Expiration Of Appointment.....	197
133. -- 139.	(Reserved).....	197
140.	Reduction In Force.....	197
141.	Calculation Of Retention Points.....	198
142.	Credited State Service.....	199
143.	Audit Of Retention Points.....	199
144.	Reduction In Force Determination And Notification.....	200
145.	Placement On Register With Reemployment Preference.....	200
146.	Use Of Registers With Reemployment Preference Requirements.....	201
147.	Interviews For Prospective Layoffs.....	202
148.	Voluntary Demotion In Lieu Of Layoff.....	202
149.	(Reserved).....	202
150.	Probationary Periods.....	202
152.	Separation During Probation.....	203
153.	Unsatisfactory Performance During A Promotion Probation Period.....	203
154.	Failure To Provide Performance Evaluation.....	203
155. -- 158.	(Reserved).....	204
159.	Status And Tenure.....	204
160. -- 168.	(Reserved).....	204
169.	Promotions.....	204
170. -- 178.	(Reserved).....	204
179.	Demotions.....	204
180.	Nondisciplinary Demotion Required.....	204
181.	Nondisciplinary Demotion Optional.....	205
182.	Disciplinary Demotion.....	205
184. -- 189.	(Reserved).....	205
190.	Disciplinary Actions.....	205
191. -- 199.	(Reserved).....	206
200.	Problem-Solving And Due Process Procedures.....	206
201.	Appeal Procedure.....	208
202.	Petition For Review Procedure.....	209
203.	Referrals From Federal Agencies On Discrimination Complaints.....	210
204. -- 209.	(Reserved).....	211

210. Performance Evaluations.....	211
211. -- 219. (Reserved).....	212
220. Records.....	212
240. Sick Leave.....	212
241. Workers Compensation And Disability.....	213
242. Family And Medical Leave.....	213
243. Maternity And Paternity Leave.....	214
244. Separation Upon Failure To Return To Work.....	214
245. -- 249. (Reserved).....	214
250. Special Leaves.....	214
272. Policy Making Authority.....	217
273. Minimum Human Resource Policies.....	217
274. -- 999. (Reserved).....	217

IDAHO STATE LIQUOR DISPENSARY

15.10.01 - Rules Of The Idaho State Liquor Dispensary

docket No. 15-1001-0301

010. Retail Stores.....	219
-------------------------	-----

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - Rules Governing Eligibility For Medicaid For Families And Children

Docket No. 16-0301-0302

214. Social Security Number (SSN) Requirement.....	222
346. Income Available To The Applicant.....	222
347. Income Eligibility.....	222
348. Actual And Anticipated Income.....	223
349. Converting Income To An Annual Amount.....	223

16.03.04 - Rules Governing The Food Stamp Program In Idaho

Docket No. 16-0304-0301

159. (Reserved).....	226
203. Social Security Number (SSN) Requirement.....	226
204. Citizenship And Qualified Non-Citizen Requirements.....	229
218. Persons Disqualified As Food Stamp Household Members.....	231
251. Able Bodied Adults Without Dependents (Abawd) Work Requirement.....	232
401. Earned Income.....	232
405. Excluded Income.....	233
537. Dependent Care Restrictions.....	235
616. Decreases Or Closure Of Food Stamps.....	235
753. Sponsored Legal Non-Citizens.....	235
756. Exceptions To Sponsor Deeming.....	235
760. Overissuance Due To Incorrect Sponsor Data.....	237
761. Collecting Claims Against Sponsors Who Signed An I-864 Affidavit Of Support On Or After December 19, 1997. 237	
762. Collecting Claims Against Sponsored Legal Non-Citizens.....	237

16.03.05 - Rules Governing Eligibility For Aid To The Aged, Blind And Disabled

Docket No. 16-0305-0302

105. Social Security Number (SSN) Requirement.....	239
200. Resources Defined.....	239
273. -- 277. (Reserved).....	239
436. Real Estate Contract Income.....	240
721. Long-Term Care Resident And Medicaid.....	240

787. Home And Community Based Services (Hcbs).....	241
788. Aged And Disabled (A&D) Waiver.....	242
789. Developmentally Disabled (DD) Waiver.....	242
790. Traumatic Brain Injury (TBI) Waiver.....	242
791. Idaho State School And Hospital (ISSH) Waiver.....	242
792. -- 799. (Reserved).....	242
840. (Reserved).....	242
841. Penalty Exceptions For Asset Transfers.....	242
842. -- 870. (Reserved).....	244
872. Exempt Trusts.....	244
16.03.08 - Rules Governing Temporary Assistance For Families In Idaho (TAFI)	
Docket No. 16-0308-0302	
133. Social Security Number (SSN) Requirement.....	247
16.03.09 - Rules Governing The Medical Assistance Program	
Docket No. 16-0309-0308	
201. Definitions - Fraud, Abuse And Misconduct.....	249
202. Documentation Of Services And Access To Records.....	250
203. Investigation And Audits.....	250
204. (Reserved).....	251
205. Department Actions.....	251
206. Denial Of Payment.....	251
208. Suspension Of Payments Pending Investigation.....	252
209. Provider Agreement Suspension.....	252
210. (Reserved).....	252
212. Civil Monetary Penalties.....	252
213. Mandatory Exclusions From The Medicaid Program.....	252
214. Terms Of Mandatory Exclusions From The Medicaid Program.....	253
215. Permissive Exclusions From The Medicaid Program.....	253
216. Aggravating Factors.....	253
217. Refusal To Enter Into An Agreement.....	254
224. Appeal Of Department Action.....	254
Docket No. 16-0309-0309	
121. Ambulatory Surgical Center.....	256
146. Personal Care Services (PCS).....	263
Docket No. 16-0309-0310	
011. Incorporation By Reference.....	271
560. School-Based Health-Related Services Provided By Idaho Public School Districts And The Idaho Infant Toddler Program Under The Individuals With Disabilities Education Act (Idea). 272	
561. Medicaid Eligibility.....	272
562. Service-Specific Eligibility.....	273
563. Evaluation And Diagnostic Services.....	273
564. Reimbursable Services.....	273
565. Psychosocial Rehabilitation (PSR) Services Description.....	276
566. -- 567. (Reserved).....	276
569. Provider Staff Qualifications.....	277
575. Payment For Services.....	279
576. Record Requirements.....	280
577. Requirements For Cooperation With And Notification Of Parents And Agencies.....	280
16.03.10 - Rules Governing Medicaid Provider Reimbursement In Idaho	

	Docket No. 16-0310-0303	
	123. Occupancy Adjustment Factor.	282
	311. Special Rates.	283
	351. (Reserved).	286
	454. Adjustment For Disproportionate Share Hospitals (DSH).	286
	16.03.17 - Service Coordination	
	Docket No. 16-0317-0301 (New Chapter)	
	000. Legal Authority.....	289
	001. Title And Scope.	289
	002. Written Interpretations.	289
	003. Administrative Appeals.	289
	004. Incorporation By Reference.	289
289	005. Office -- Office Hours -- Mailing Address -- Street Address -- Telephone Number -- Internet Website.	
	006. Confidentiality Of Records And Public Records Act Compliance And Requests.	290
	007. Limitations On The Provision Of Direct Services.	290
	008. -- 009. (Reserved).	290
	010. Definitions.	290
	011. -- 014. (Reserved).	291
	015. Health, Safety And Fraud Reporting.	291
	016. -- 099. (Reserved).	291
	100. Prior Authorization For Service Coordination Services.	292
	101. -- 199. (Reserved).	292
	200. Eligibility For Service Coordination Services.	292
	201. Eligibility - Individuals With A Developmental Disability.	292
	202. Eligibility - Individuals Who Receive Personal Assistance Services.	292
	203. Eligibility - Adults With Severe And Persistent Mental Illness.	292
	204. Eligibility - Children Up To The Age Of Twenty-One.	293
	205. -- 249. (Reserved).	294
	250. Service Coordination Functions.	294
	251. -- 299. (Reserved).	294
	300. Assessment.	294
	301. -- 399. (Reserved).	295
	400. Service Plan Development.	295
	401. -- 499. (Reserved).	296
	500. Service Coordinator Contact And Availability.	296
	501. -- 549. (Reserved).	297
	550. Participant Choice Of Service Coordinators And Providers.	297
	551. -- 599. (Reserved).	297
	600. Crisis Assistance.	297
	601. -- 699. (Reserved).	297
	700. Service Coordinator Qualifications.	297
	701. -- 724. (Reserved).	298
	725. Paraprofessionals.	298
	726. -- 749. (Reserved).	298
	750. Supervision Of Service Coordination.	298
	751. Agency Case Loads.	298
	752. Documentation Of Service Coordination.	298
	753. -- 799. (Reserved).	299
	800. Limitations On Service Coordination.	299
	801. Limitations On Payment For Service Coordination.	299
	802. -- 999. (Reserved).	300

16.03.22 - Rules For Licensed Residential And Assisted Living Facilities

Docket No. 16-0322-0301

428. Medication Standards And Requirements..... 302

16.05.01 - Use And Disclosure Of Department Records

Docket No. 16-0501-0302 - (Chapter Rewrite)

306

000. Legal Authority..... 305
001. Title And Scope..... 305
002. Written Interpretations..... 305
003. Administrative Appeal..... 305
004. Incorporation By Reference..... 305
005. Office -- Office Hours -- Mailing Address -- Street Address -- Telephone Number -- Internet Website.
006. Public Records Act Compliance And Requests..... 306
007. District Court Appeals, Complaints And Requests For Reconsideration..... 306
008. -- 009. (Reserved)..... 307
010. Definitions..... 307
011. Definitions For Vital Statistics..... 308
012. -- 049. (Reserved)..... 309
050. Consent To Gather, Use And Disclose Information..... 309
051. Authorization For The Use And Disclosure Of Confidential Information..... 309
052. -- 074. (Reserved)..... 310
075. Use And Disclosure Of Confidential Information..... 310
076. -- 099. (Reserved)..... 311
100. Exceptions To Requirement For Authorization..... 311
101. Abuse, Neglect, Or Domestic Violence..... 312
102. Victim Of Other Crime..... 313
103. Serious Threat To Health Or Safety..... 313
104. Reporting Of Crime On Premises..... 313
105. Reporting Crime In Emergencies..... 313
106. -- 124. (Reserved)..... 314
125. Access To An Individual's Own Record..... 314
126. -- 149. (Reserved)..... 314
150. Amendment Of Record..... 314
151. -- 174. (Reserved)..... 314
175. Report Of Disclosures Of Health Information..... 314
176. -- 189. (Reserved)..... 315
190. Records Of Decedents..... 315
191. Data For Research Or Other Purposes..... 315
192. -- 199. (Reserved)..... 315
200. Abortion For Minors..... 315
201. Abuse, Neglect Or Domestic Violence..... 316
202. Adoption..... 316
203. -- 209. (Reserved)..... 316
210. Child Protection..... 316
211. Children's Mental Health..... 316
212. -- 219. (Reserved)..... 316
220. Hard To Place Children..... 316
221. Hospital Records..... 316
222. Human Resources..... 316
223. Infant/Toddler Program..... 316
224. -- 229. (Reserved)..... 316
230. Medical Care..... 316

231. -- 239. (Reserved).....	316
240. Mental Illness.....	316
241. Minor's Consent Regarding Infectious, Contagious Or Communicable Disease.....	317
242. -- 249. (Reserved).....	317
250. Substance Abuse.....	317
251. -- 259. (Reserved).....	317
260. Termination Of Parental Rights.....	317
261. -- 269. (Reserved).....	317
270. Venereal Diseases.....	317
271. -- 279. (Reserved).....	317
280. Vital Statistics - Verification Of Data.....	317
281. Vital Statistics - Disclosure For Research, Public Health Or Statistical Purposes.....	317
282. Vital Statistics - Registry Of Putative Fathers.....	317
283. Vital Statistics - Procedures For Requesting Information.....	317
284. Women, Infants And Children (WIC) Program.....	318
285. -- 999. (Reserved).....	318
 16.06.12 - Rules Governing The Idaho Child Care Program	
Docket No. 16-0612-0301	
307. Sliding Fee Schedules.....	320

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE
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**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

Subject Index

A

- AAA Assessments Of Providers 168
- AAA Budget Forms & Revisions 165
- AAA Designation 164
- AAA Provider Appeals 166
- AAA Provider Subcontracts 165
- Able Bodied Adults Without Dependents (ABAWD) Work Requirement 232
- Abolishment Of Positions, Human Resources, Personnel Commission 181
- Abortion For Minors, Use & Disclose Department Records 315
- Abuse Or Abusive 249
- Abuse, Neglect Or Domestic Violence, Use & Disclose Department Records 316
- Abuse, Neglect, Or Domestic Violence, Use & Disclose Department Records 312
- Acceptance Of Advance Deposit Wagers 116
- Access To An Individual's Own Record, Use & Disclose Department Records 314
- Access To Documentation & Records 249
- Accordance With Financial Institution 113
- Account Holder Responsibilities 116
- Account Holder Shall Receive 112
- Accountability 93
- Accounts Shall Not Bear Any Interest 113
- Acting Appointment To A Position 196
- Active Teacher 54
- Actual & Anticipated Income 223
- Additional Yearly Growth (AYG) 96
- Address For Notification Purposes 45
- Adequate Registers, Five Candidates 193
- Adequate Yearly Progress (AYP) 94
- Adequate Yearly Progress (AYP) Definitions 94
- Adjusted Access Fees During Pilot Projects, ILETS Network 127
- Adjustment For Disproportionate Share Hospitals (DSH) 286
- Administration Of Criminal Justice 122
- Administrative Leave With Pay 215
- Administrative Messages, Information Access & Dissemination, ILETS 128
- Administrator Certificate 66
- Admission To State Store 220
- Adoption Of Classification Schedule, Human Resources, Personnel Commission 181
- Adoption, Use & Disclose Department Records 316
- Adults Using High Cost Services 292
- Adults With Severe & Persistent Mental Illness 290, 292
- Advance Deposit Wagering Rules Apply 113
- Advanced Occupational Specialist Certificate 72
- Affirmation Of Factoring 183
- Aged & Disabled (A&D) Waiver 242
- Agency Access To ILETS 125
- Agency Case Loads 298
- Agency Security Contacts, ILETS Security 129
- Aggravating Factors, Mandatory Exclusions, Medical Assistance 253
- Agriculture Science & Technology 62
- Allocation 174
- Allowable Costs, AAA Operations 169
- Alternate Governance Plan 97
- Alternate Requirements For HVAC Contractor (Applies Only Until April 1, 2005) 47
- Alternate Requirements For HVAC Journeyman (Applies Only Until April 1, 2005) 48
- Alternate Routes To Certification 85
- Alternative Certification 84
- Alternative Communication, Use & Disclose Department Records 310
- Alternative Examination Process For Persons With Disabilities 190
- Alternative Requirements For HVAC Specialty Contractor (Applies Only Until April 1, 2005) 47
- Alternative Route Preparation Program 87
- Alternative Routes 54
- Alternative Work Schedules & Locations 186
- Ambulatory Surgical Center, Eligible Recipients 256
- Amendment Of Health Information 314
- Amendment Of Record, Use & Disclose Department Records 314
- American Government 62
- American Indian Born In Canada 230
- American Indian Born Outside The U.S. 231
- Announcement Of Recruitment, Recruitment 187
- Annual Eligibility Redetermination 268
- Annual IEP, IFSP, Or SP (Plan) Development 273
- Annual Limit, HCBS-NF Or HCBS-DD 242
- Appeal 174
- Appeal Of Examination Score, Review & Appeals 190
- Appeal Procedure, Problem Solving & Due Process Procedures 208
- Appeals Process 97
- Appeals, Medical Assistance 254
- Appellant 174
- Applicant 32
- Application By Disabled Veterans 188
- Application By Military Personnel, Examination 188
- Application Documentation 36
- Application Filed With Fees 38
- Application For Change In Licensing Class 36
- Application For Idaho Certificate 73
- Application For Licensure - Documentation, Appraisals, References, Bonding, & Financial Statements 36
- Application For SSN 222, 239
- Application For SSN, Food Stamps 226
- Application Of Big Game Rules, Special Big Horn Sheep Tag 142
- Application Procedures, Idaho Certificate 73
- Application Submission 46
- Application, Renewal, & Registration Fees 46
- Application, Special Rates, Director Authority 283
- Applications, Examination 187
- Applications, Fees & Charges, The Planting Of Beans 22

Applications, Stake Races, Horse Racing 100
Applications, Taking Of Big Game Animals/Idaho 147
Appointing Authority 174
Appointment, Limited 174
Appointment, Nonclassified 175
Appointment, Original Or Initial 175
Appointment, Permanent 175
Appointment, Probationary 175
Appointment, Project Exempt 175
Appointment, Provisional 175
Appointment, Temporary 175
Appointments, Reinstatements, Transfers, & Resignations 193
Appraisals, Public Works Contractors License Board 37
Apprehension By Law Enforcement 313
Approval Of Form, Performance Evaluations 211
Approval Of New, Revised & Deleted Classifications, Human Resources, Personnel Commission 181
Approval Of Petition, Public Works Contractors License Board 34
Approval Of The License For An Advance Deposit Wagering Hub Operation 114
Area Advisory Councils On Aging, AAA Operations 167
Area Agency On Aging (AAA) 163
Area Inspections, Fees & Charges, Phytosanitary & Post-Entry Certification Rules 20
Area Plan 163
Area Plans, AAA Operations 168
Assessment & Plan Development 299
Assessment Content For Developmental Disability 295
Assessment Content For Mental Health 295
Assessment Content For Personal Assistance Services 295
Assessment For Adverse Impact 197
Assessment In The Public Schools 90
Assessment Schedule, August 1, 2002 92
Assessment, Service Coordination 294
Assets Returned, Asset Transfers 243
Assignment Of Hay Evaluation Points 185

Assignment To Pay Grade, Hay Evaluation Points 185
Assistance To Departments, Problem Solving & Due Process Procedures 208
Assistance With Medication, Residential Or Assisted Living Facilities 302
Associated System, Accessible Through ILETS 122
Association Which Accepts The Wager 104
Attorney Fees & Costs In A Petition For Review 210
Audiology Endorsement 69
Audit Of Retention Points 199
Audits 169
Audits, Retail Stores, Liquor Dispensary 220
Authorization For Advanced Deposit Wagering 110
Authorization For The Use & Disclosure Of Health & Other Confidential Information 309
Authorized Agencies, ILETS Access By Agencies 125
Authorized Pay Rate, Compensation Plan 183
Authorized User 105

B

Background Checks Of Terminal Operators Required, Terminal Access To The ILETS Network 128
Basic Allowance For Housing (BAH) 233
Basis For Suspension Of Payments 252
Benefit Of Spouse, Assets 243
Best Interest Of The Individual 313
Bids, Curricular Materials 98
Bighorn Sheep Lottery Tag 142
Bilingual Education 62
Billed Services Not Provided Or Not Medically Necessary, Denial Of Payment, Medical Assistance 251
Biological Science 63
Blind Review 163
Bond Or Irrevocable Letter Of Credit 115
Bonuses 186
Bows, Crossbows, Arrows, Bolts, Chemicals Or Explosives, Unlawful

Methods/Taking Of Big Game Animals/Idaho 148
Brokerage Model 290
Budget Revisions, AAA Operations 165
Buildings, School Facilities Designed & Built To Uniform Building Code 75
Business Organization - Changes In Organization Or Structure - Members Of Joint Ventures - Changes For Reasons Other Than Death 41
Business Technology Education 63

C

Calculating Family Payment, ICCP 320
Calculation Of Pay 184
Calculation Of Pay For Police & Fire Employees 184
Calculation Of Retention Points Since Last Evaluation 199
Calculation Of Retention Points, RIF 198, 200
Care By Household Member 235
Career Counselor Endorsement 71
Cash Donations, Excluded Income 233
Cause For Disciplinary Actions 205
Center May Refuse Deposits 112
Center May Suspend Or Close Account 112
Certain Hmong & Highland Laotians 231
Certifiable Range 175
Certificate, Misassignments - Grandfathering 83
Certificates Issued To Applicants From Regionally Accredited Institutions 55
Certification Of Teachers Trained In Foreign Institutions 55
Certification Standards For Professional-Technical Educators 70
Certification To Permanent Status 180
Change In Designed Capacity, Occupancy Adjustment Factor 283
Change Of Address 46
Changes In License Certificate, Public Works Contractors License Board 42
Child Protection Agency 312
Child Protection, Use & Disclose Department Records 316

- Child Support Payments 233
Children Up To The Age Of Twenty-One 293
Children's Mental Health, Use & Disclose Department Records 316
Children's Mental Health 314
Citizenship & Qualified Non-Citizen Requirements 229
Civil Monetary Penalties, Medical Assistance 252
Civil Rights, AAA Operations 169
Claim, Request Or Demand For Payment 249
Classification Schedule 175
Classification Specification 175
Classified Service 175
Clinical 314
Clinical Laboratories 314
Close Or Refuse Account 112
Closed Wagering 116
Closed-Loop Subscriber Based System 114
Collaborative Staffing 312
Collecting Claims Against Sponsored Legal Noncitizens 237
Collecting Claims Against Sponsors Who Signed An I-864 Affidavit Of Support On Or After December 19, 1997 237
Combination Of Work & Work Programs, ABAWD Work Requirement 232
Combined Pari-Mutuel Pools (Combined Pools) 105
Commercial Crustacea Species 159
Commercial Fishing 158
Commercial Fishing Areas, Idaho Commercial Fishing 160
Commercial Gear/Methods Of Take For Fish/Crustacea, Idaho Commercial Fishing 160
Commercial Non-Game Fish Species 158
Commission Approves The Methods 110
Committed An Offense Or Act Not In Best Interest Of Medicaid Recipients 254
Communication 98
Communication, Public Works Contractors License Board 33
Communications/Drama 63
Compensation Of Employees 182
Compensation Plan 175, 183
Compensation Plan Reviews 183
Compensation Schedule 175
Competitive Bids, AAA Operations 165
Complaints Against AAA Employees 169
Conditions For Acting Appointment 196
Conditions For Layoff 197
Conduct & Rating Of Examinations Including Veterans' Preference Points 189
Conduct Of Salary Surveys 182
Confidential Information 117, 307, 314
Confirmation Fees, Fees & Charges, The Planting Of Beans 23
Conflict Of Interest - Nepotism 217
Conflict Of Interest & Personal Conduct, Human Resources, Personnel Commission 180
Conflict Of Interest/Nepotism 181
Consent To Gather, Use & Disclose Department Records 309
Consideration For Hire By Other Agencies 201
Construction Manager Examinations 43
Construction Manager Licensing Fees 38
Consultant 176
Consultant Specialist Certificate 83
Consultants & Persons Employed Under Independent Contract 181
Consulting Teacher Endorsement 70
Consumer Economics 63
Contact With Participant 296
Content Of Announcements, Recruitment Examination 187
Content Of Authorization, Use & Disclose Department Records 309
Content Specialist 86
Content, Pedagogy & Performance Assessment For Certification 59
Content, Statewide Assessment Program 90
Continuing Accreditation, NCATE 75
Contract Management Requirements, AAA Operations 165
Contracts Term 165
Contrary To Rules Or Provider Agreement 251
Converting Income To An Annual Amount 223
Convicted Of A Felony 254
Conviction Of A Criminal Offense Related To Patient Neglect Or Abuse, Mandatory Exclusions 253
Conviction Of A Criminal Offense, Mandatory Exclusion 253
Conviction, Criminal Offense 249
Copies Of Required Referrals & Recommendations 280
Copying Records 250
Corrective Action 97
Cost Of Care, HCBS-NF 241
Costs Of Additional Services, Assessment In The Public Schools 92
Costs Paid By The State, Assessment In The Public Schools 92
Counselor Endorsement 68
Court & Jury Services & Problem-Solving & Due Process Leave 215
Covered Surgical Procedures, Medical Assistance 256
Crayfish Traps, Idaho Commercial Fishing Areas 161
Credential 54
Credit Requirements, High School 89
Credited State Service 193
Credited State Service, RIF 199
Credits To An Account 112
Criminal History Check 268, 298
Criminal History Records, Information Access & Dissemination, ILETS 128
Criminal Justice Agency 122
Crisis Assistance 297
Crisis Assistance Documentation For Adults With Severe & Persistent Mental Illness 299
Crisis Assistance For Adults With A Developmental Disability 297
Crisis Assistance For Adults With Severe & Persistent Mental Illness 297
Crisis Assistance For Children Receiving EPSDT Service Coordination 297
Crisis Assistance For Individuals Who Receive Personal Assistance

- Services 297
- Crisis Service Coordination 291
- Current Assessment 291
- Curricular Materials Selection 98
- Customer Refunds & Exchanges,
Liquor Dispensary Retail 219
- Customer Response Cards, Liquor
Dispensary 220
- D**
- DSH Payments Will Not Exceed
Costs 287
- DSH Survey Requirements 286
- DSH Will Be Calculated On An Annual
Basis 287
- Data Collection 97
- Data For Research Or Other Purposes,
Use & Disclose Department
Records 315
- Debits To An Account 113
- Decoder 105
- Decreases Or Closure Of Food
Stamps 235
- Deemed Disproportionate Share
Hospital (DSH) 287
- Deer & Elk Outfitter Allocated Tag,
Idaho Hunting/Fishing License
Certificates 137
- Defective Authorization, Use &
Disclose Department Records 309
- Definitions For Use With The Code Of
Ethics For Idaho Professional
Educators 80
- Definitions For Vital Statistics, Use &
Disclose Department Records 308
- Definitions, IDAPA 07.05.01, Rules Of
The Public Works Contractors
License Board 32
- Definitions, IDAPA 07.07.01, Rules
Governing Installation Of Heating,
Ventilation, & Air Conditioning
Systems, Division Of Building
Safety 46
- Definitions, IDAPA 08.02.02, Rules
Governing Uniformity 54
- Definitions, IDAPA 11.04.02, Rules
Governing Simulcasting 104
- Definitions, IDAPA 11.05.01, Rules
Governing Alcohol Beverage
Control 119
- Definitions, IDAPA 11.10.01, Rules
Governing ILETS - Idaho Law
Enforcement Teletypewriter
System 122
- Definitions, IDAPA 13.01.02, Rules
Governing Public Safety 133
- Definitions, IDAPA 13.01.12,
Commercial Fishing In The State Of
Idaho 158
- Definitions, IDAPA 15.01.20, Rules
Governing Area Agency On Aging
(AAA) Operations 163
- Definitions, IDAPA 15.04.01, Rules Of
The Division Of Human Resources &
Personnel Commission 174
- Definitions, IDAPA 16.03.17, Service
Coordination 290
- Definitions, IDAPA 16.05.01, Use &
Disclosure Of Department
Records 307
- Definitions, ILETS Security 128
- Definitions, Medical Assistance, Fraud,
Abuse & Misconduct 249
- Degree Based Professional-Technical
Certification 70
- Demographic Information, Assessment
In The Public Schools 92
- Demotion 176
- Demotions 204
- Denial Of AAA Designation 164
- Denial Of Applications,
Examination 188
- Denial Of Payment, Medical
Assistance 251
- Denial Or Termination Of Service 168
- Department Actions, Medical
Assistance, Fraud, Abuse,
Misconduct 251
- Department Business, Monitoring &
Legal Functions, Use & Disclose
Department Records,
Exceptions 312
- Department Salary Administration
Policies 185
- Departmental Classification 176
- Departmental Promotional
Registers 190
- Dependent Care Restrictions 235
- Designation Of Examiners, Rating Of
Examinations 189
- Detailed Plan Of Operations 115
- Determination Of Eligibility, Teachers
Trained In Foreign Institutions 55
- Determination Of Payment For
Qualifying Residents, Special Rates,
Specialized Care 284
- Determinations, Special Rates, Director
Authority 283
- Developmental Therapy 273
- Developmental Therapy &
Evaluation 277
- Developmentally Disabled (DD)
Waiver 242
- Diagnosis Of Mental Illness 293
- Director Of Special Education &
Related Services Endorsement 67
- Disabled Veterans' Preference 191
- Disciplinary Actions 205
- Disciplinary Demotion 205
- Disciplinary Suspension 206
- Disclosure For Research, Public Health
Or Statistical Purposes 317
- Disclosure Of Information For Hiring
Purposes 188
- Discrimination Prohibited, Maternity &
Paternity Leave 214
- Dismissal 176
- Display, Simulcast Operator 109
- Distinguished Schools 96
- Distressed Liquor, Price
Adjustments 220
- Distribution Of Announcements,
Recruitment Examination 187
- Distribution Of Receipts From Multi-
Jurisdictional Simulcasting &
Interactive Wagering Totalizator
Hubs 116
- Do Not Re-Release Records, Use &
Disclose Department Records 311
- Documentation Of Eligibility 298
- Documentation Of Service
Coordination 298
- Documentation Of Services & Access
To Records, Medical Assistance 250
- Documented Disclosures, Use &
Disclose Department Records 314
- Donated Leave 213
- Downlink 105
- Downward Reclass 198
- Drawing For Super Tag, Mandatory
Deer/Elk Report, Taking Of Big
Game Animals/Idaho 151
- Driver Education 63
- Drug Convicted Felon, Food Stamps/
Disqualified Household
Members 232
- Drugfree Workplace 217

Dual Enrollment, Testing In The Public Schools 93
Duration Of Eligibility Registers 191
Duration Of Suspension Of Payments 252
During Entrance & Voluntary Probation, Unsatisfactory Service 203
Duties Of Simulcast Operator 108
Duty To Warn Or Report, Use & Disclose Department Records, Exceptions 312

E

EPSDT Assessment 295
Early & Periodic Screening Diagnosis & Treatment (EPSDT) 290
Early Childhood Special Education Blended Certificate 60
Earned Administrative Leave 215
Earned Administrative Leave (EAL) 176
Earned Income 232
Earnings Of Child Under Age Eighteen Attending School 233
Earth Science 63
Economics 64
Education Exclusion 235
Education Media Generalist 64
Educational Disability 272
Effect On Benefits & Services, Use & Disclose Department Records 310
Effective 131
Effective Date, Medicaid 242
Elected State Official 312
Election Leave 216
Elements Of Due Process Procedure, Problem Solving 207
Elements Of The Problem-Solving Procedure 207
Eligibility - Individuals With A Developmental Disability 292
Eligibility & Time For Filing Under Problem-Solving Procedure 207
Eligibility For Promotion 204
Eligibility For Service Coordination Services 292
Eligibility, AAA Operations 168
Eligibility, Bighorn Sheep Lottery Tag 142
Eligibility, Shift Differential 186
Eligibility, Special Bighorn Sheep Tag 141

Employee 176
Employee Assistance Program Leave 216
Employee Personnel Action Documents 212
Employee Rights, Seasonal Appointment 194
Employee Service Records 212
Employment By Other Agency 201
Employment History 176
Enclosure, Enclosure-Public 105
Encryption (Encrypted Or Encoded) 105
Endangerment Of Health Or Safety Of A Patient, Medical Assistance 253
Endorsement 54
Endorsements 62
English 64
English As A Second Language 64
Escape From Law Enforcement 313
Establish & Manage Advance Deposit Wagering Center 111
Establishing An Account 111
Establishment Of Departmental Problem-Solving & Due Process Procedures 206
Establishment, ILETS Network 124
Evaluation & Diagnostic Services, School Based Programs 273
Evaluation Schedule, Performance 211
Examination 176
Examination Upon Reclassification 189
Examination, An Employee Who Has Not Completed A Probationary Period 180
Exception For Religious Objection 227
Exception To Fair Market Value 244
Exceptional Child Certificate 69
Exceptions To Requirement For Authorization, Use & Disclose Department Records 311
Exceptions To Sponsor Deeming 235
Excluded Income 233
Excluded Real Estate Contract, AABD 239
Exclusion 249
Executive Officer Of The Board, ILETS 123
Executive Officer, ILETS Board 122
Exemplary Status 96

Exempt Trusts 244
Expiration Of Appointment, Acting Capacity 197
Extension Of Probationary Period 202
Extension Of Time To File Financial Statement 36

F

Facility Approval, ASC 256
Factoring 176
Factoring Benchmarks, Hay Evaluation Points 185
Factoring Process, Hay Evaluation Points 185
Factors Considered In Award Of Attorney Fees & Costs, Problem Solving & Due Process Procedures 209
Failed To Repay 254
Failure To Apply For SSN 222, 239
Failure To Cooperate In Paternity Establishment Or Obtaining Support, Food Stamp/Disqualified Household Members 232
Failure To Disclose Or Make Available Records, Medical Assistance 253
Failure To Meet Adequate Yearly Progress (AYP) 97
Failure To Provide Immediate Access To Records 251
Failure To Provide Performance Evaluation 203
Family & Consumer Science 64
Family & Medical Leave 213
Federal Earned Income Tax Credit (EITC) 234
Fee Schedule, Modular Buildings 27
Fee, Stake Races, Horse Racing 102
Fees 74
Fees & Charges, Phytosanitary & Post-Entry Certification Rules 19
Fees & Charges, The Planting Of Beans 22
Fees, Hunter Education, Public Safety 133
Fees, Licenses, Public Works Contractors License Board 38
Fees, Stake Races 100
Field Inspections, Fees & Charges, The Planting Of Beans 22
Field Or Lot Inspections, Fees & Charges, Phytosanitary & Post-Entry Certification Rules 20

Filing Of Appeal & Appearances 208
Filing Of Applications,
Examination 188
Filing Of Documents, Appeal
Procedure 208
Filings Alleging Sexual Harassment Or
Other Illegal Discrimination 207
Financial Management, AAA
Operations 169
Financial Statement 32
Firearms, Unlawful Methods/Taking Of
Big Game Animals/Idaho 148
Fixed Costs, Occupancy
Adjustment 283
Foreign Exchange Students, High
School 89
Foreign Language 64
Form & Content Of Petition, Public
Works Contractors License
Board 33
Fraud Or Fraudulent 249
Fraud Victim 244
From An Account Maintained By The
Hub Operator 115
Fugitive Felon, Food Stamp/
Disqualified Household
Members 231
Fugitives & Missing Persons, Use &
Disclose Department Records,
Exceptions 311
Full-Time Active Duty U.S. Armed
Forces Member 230

G

General Classification 176
General Jurisdiction, Simulcasting 104
General Policy, ILETS Security 128
General Use Areas, No Alcoholic
Beverages 52
Geography 64
Gifted & Talented 64
Good Cause 176
Good Cause For Not Applying For SSN,
Food Stamps 227, 247
Graduation From High School 89
Granting Restrictions, License,
Simulcasting 108
Group PSR 276
Group Service Coordination 300
Guardian Ad Litem 307
Guest, Guest Association Or Simulcast
Operator 105
Guests & Visitors 52

H

HVAC Apprentice Requirements For
Registration 48
HVAC Contractor & HVAC
Journeyman Applications For
Examination & Certificates Of
Competency, & Registration Of
Apprentices 46
HVAC Contractor Certificate Of
Competency 46
HVAC Contractors & HVAC Specialty
Contractors 49
HVAC Installation Permit & Inspection
Fees - After Commencement Of
Work 50
HVAC Installation Permit & Inspection
Fees - Prior To Commencement Of
Work 49
HVAC Journeyman Certificates Of
Competency 48
HVAC Permits 48
HVAC Specialty Contractor Certificate
Of Competency 47
Handicapped Archery Permit, Idaho
Hunting /Fishing License
Certificates 136
Handicapped Persons Motor Vehicle
Hunting Permits, Idaho Hunting /
Fishing License Certificates 135
Hard To Place Children, Use & Disclose
Department Records 316
Health 64
Health Information 307
Health, Safety & Fraud Reporting 291
Health/Wellness, High School
Graduation Standards 90
Healthy Connections 300
Hearing Impairment 69
High Cost Services 291
High School Graduation Standards, 7/1/
00 89
History 64
Holiday Pay Calculation 184
Home & Community Based Services
(HCBS) 241
Home To Adult Child, Assets 243
Home To Brother Or Sister, Assets 243
Home To Minor Child Or Disabled
Adult Child, Assets 243
Home To Spouse, Assets 242
Hospital Records, Use & Disclose
Department Records 316

Host Or Host Association 106
Hours & Days Of Operation, Liquor
Dispensary Retail 220
Hours Paid At Shift Rate 186
Hours Worked 176
Human Resources, Use & Disclose
Department Records 316
Human Services Field 291
Humanities 64
Humanities, High School Graduation
Standards 89
Hunter Education, Public Safety 133

I

IEP, IFSP, Or SP Plan
Development 277
III, Interstate Identification Index 122
ILETS Board 123, 124
ILETS Board, Resignations &
Replacements, Notification 124
ILETS Network 124
ILETS Network User Access Fees 126
ILETS Security 128
ILETS Security Officer 129
ILETS, Idaho Law Enforcement
Teletypewriter System 123
Idaho Commission On Aging
(ICOA) 163
Idaho Educator Credential 56
Idaho Interim Certificate, State Board
Of Education 55
Idaho Rules Of Administrative
Procedure 208
Idaho State School & Hospital (ISSH)
Waiver 242
Idaho Student Achievement
Standards 55
Identification Of Classifications,
RIF 200
Identifying Account Number 111
Identifying Information 307
Immediate Access To Records 250
In-Kind Payment, Dependent Care 235
Incapacity Of Victim 313
Incapacity Of Victim Or Emergency
Circumstance 313
Incarceration 300
Incidental Work 32
Income Eligibility 222
Income In Kind 233
Income Limit 241
Income Not Counted 240
Income Trust 245

- Incumbent 177
Independent Audit Report 32
Independent Contractor 177
Individual PSR 276
Individualized Education Program (IEP) 272
Individuals Who Receive Personal Assistance Services 292
Individuals With A Direct & Tangible Interest 308
Industry Based Professional-Technical Certification 71
Ineligible Aliens, Food Stamp/ Disqualified Household Members 231
Ineligible Employees, Shift Differential 186
Infant/Toddler Program, Use & Disclose Department Records 316
Informal Representative 307
Informal Representatives 312
Information Access & Dissemination, Information Made Available To ILETS From Various Sources & Agencies 128
Informed Consent 299
Infrequent Or Irregular Income 233
Initial Plan Development 299
Initial Qualifications 84, 87
Inpatients In Hospitals Or Nursing Homes, Infant Toddler Program Payment 279
Insignia, Commercial Coaches 28
Insignia, Modular Buildings 26
Inspection Of Buildings, Including Portable/Temporary School Buildings 75
Institutional Recommendation 55
Instructions For Account Wagers 115
Insufficient DSH Allotment Amounts 287
Intensive Behavioral Intervention (IBI) 273
Intensive Behavioral Intervention, Reimbursable Services 274
Intent To Get Fair Market Value 243
Interdepartmental Promotions 204
Interdepartmental Transfer, Sick Leave 212
Interested Person 177
Interface Agency 123
Interruption Of Probationary Period 202
Interstate Simulcast Wagering 106
Intoxication 177
Intrastate Simulcasting Wagering 106
Investigation & Audits, Potential Instances Of Fraud, Abuse, Misconduct, Medical Assistance 250
Investigation Methods, Potential Instances Of Fraud, Abuse, Misconduct 250
Investigation Pending 254
Investigations Or Inspections 111, 115
Involuntary Transfer 177, 196
- J**
- JSAP Or Work Registration Noncompliance, Food Stamp/ Disqualified Household Members 231
Journalism 65
Judgement Of Professional Staff 313
- K**
- Knowingly, Known, Or With Knowledge 249
- L**
- Laboratory Seed Sampling, Fees & Charges, The Planting Of Beans 23
Layoff After Six Months' Disability 213
Layoff By Position, RIF 197
Layoff Unit, RIF 198
Leave During Facility Closure Or Inaccessibility 216
Leave Of Absence To Assume A Nonclassified Position 215
Leave Of Absence With Pay 177
Leave Of Absence Without Pay 177
Leave Of Absence Without Pay, Special Leaves 214
Legal Representative 307
Legally Authorized Agency 312
Letters Of Authorization (LOA) 83
License For Multi-Jurisdictional Simulcasting & Interactive Wagering Totalizator Hub 114
License Granted 114
License Number On Bids, Public Works Contractors License Board 42
License Renewal - Filing Deadlines, Petitions For Extension Of Time To File, Lapsed Licenses 34
Licensed Premises 119
Licensee 119
Licenses For Simulcast Operators 107
Licenses, Tags/Permits, Idaho Commercial Fishing 159
Light Or Limited Duty 177
Limit On The Number Of Area Agencies & PSA's 164
Limitation On Length Of Appointment, Acting 196
Limitations On Payment For Service Coordination 299
Limitations On Service Coordination 299
Limitations On The Provision Of Direct Services 290
Limited Approval Alternatives 83
Limited Occupational Specialist Certificate 72
Limited Service Agreement 194
Limited Service Appointments 194
Limited Transitional Letter Of Approval 83
Linking The Participant To Needed Services 294
Loans, Excluded As Income 234
Location Of Examinations 188
Long-Term Care Resident & Medicaid 240
- M**
- Mailing Address 117
Maintained In The Community, HCBS 241
Maintenance Of Documentation, Use & Disclose Department Records 315
Management Control Agreement, Between Criminal Justice & Non-Criminal Justice Agency 123
Managing Employee 249
Mandatory Deer/Elk Report Requirements, Taking Of Big Game Animals/Idaho 151
Mandatory Eligibility, DSH Status 286
Mandatory Exclusions From The Medicaid Program, Medical Assistance 252
Mandatory Hunter Education Program, Public Safety 133
Marketing Technology Education 65
Maternity & Paternity Leave 214
Mathematics 65

- Mathematics - Standard 65
Mathematics & Science, High School
Graduation Standards 89
Maximum Income & Sliding Fee
Schedules, ICCP 320
May Suspend Or Close Account 112
Medicaid Eligibility, School Based
Program 272
Medicaid Income Limit Of Long-Term
Care Resident Less Than Thirty
Days 240
Medicaid Income Limit Of Long-Term
Care Resident Thirty Days Or
More 240
Medical Assistance 249
Medical Care & Services Provided 265
Medical Care, Use & Disclose
Department Records 316
Medical, Dental Or Optical
Appointments Leave (MDA) 212
Medication Distribution System,
Residential Or Assisted Living
Facilities 302
Medication Standards & Requirements,
Residential Or Assisted Living
Facilities 302
Meetings & Quorum 123
Mental Illness 316
Merit Increase 177
Military Leave With Pay 215
Military Leave Without Pay 215
Minimum Deposit 111
Minimum Education
Requirements 298
Minimum Human Resource
Policies 217
Minimum Qualification Specialty 177
Minnow Traps, Idaho Commercial
Fishing Areas 161
Minor's Consent Regarding Infectious,
Contagious Or Communicable
Disease, Use & Disclose
Department 317
Misassignments - Grandfathering, State
Board Of Education 83
Modular Building Fees 27
Money For Third Party Care 234
Money Withheld, Excluded
Income 233
Monitoring & Coordination Of
Services 294
Multi-Jurisdictional Simuclasting &
Interactive Wagering Totalizator
Hub 106
Multidisciplinary Staffing 312
Multifamily, Commercial, Institutional,
Industrial, & All Other HVAC
Installation Permit & Inspection
Fees 50
Multiple Impairment 70
Music 65
Muzzleloaders, Unlawful Methods/
Taking Of Big Game Animals/
Idaho 149
- N**
- NCIC, National Crime Information
Center 123
NLETS, National Law Enforcement
Telecommunication System 123
Name Of Natural Persons 112
Native American Language 66
Natural Person 106
Natural Science 65
Need-To-Know 307
Nepotism, Human Resources, Personnel
Commission 180
New Classification 177
New Facility, Occupancy Adjustment
Factor 283
New Licenses 119
No Benefit To Participant, Asset
Transfer 244
No Fee Basis 181
No Surcharge For Non-Idaho
Residents 114
Non-Criminal Justice Agency 123
Non-Medical Care & Services
Provided 266
Non-Profit Agency Contractors 165
Nonclassified Employees Subject To
Classified Service Subsequent To
April 5, 1985 180
Nondisciplinary Demotion
Optional 205
Nondisciplinary Demotion
Required 204
Nonresident Deer & Elk Tag Outfitter
Set-Aside, Idaho Hunting/Fishing
License Certificates 136
Nonresident Deer & Elk Tag Quotas,
Idaho Hunting/Fishing License
Certificates 138
Nonresident Permit Limitations, Taking
Of Big Game Animals/Idaho 145
- Nontransferable 112
Not To Be Treated As Employees 181
Notice & Record Of Results Of
Examination 189
Notice Of Suspension Of
Payments 252
Notice To Administrator, Disciplinary
Action 206
Notice, Answer, Hearing, Decision &
Order, Public Works Contractors
License Board 42
Notification Of Affected Employees,
RIF 200
Notification Of Parents 280
Notification To Administrator 200
Notification To Administrator,
RIF 200
Notification To Primary Care
Physician 281
Notification, Problem Solving & Due
Process Procedures 207
Notification, Unsatisfactory
Service 203
Number Of Names On Register,
Eligibility Registers 193
Number Of Starters, Stake Races, Horse
Racing 102
- O**
- Occasional Or Sporadic Work 177
Occupancy Adjustment Factor,
Medicaid 282
Occupancy Adjustment, Facility's
Designed Capacity Has Been
Changed 283
Occupancy Levels, Occupancy
Adjustment Factor 282
Official Vehicle For Approving
Existing Teacher Education
Programs 74
On-Call Time 177
On-The-Job Training Programs 233
One Hundred & Twenty Day Review,
IEP 280
Open Competitive Registers 190
Operation Of An Account 112
Operation Of Compensation Plan,
Human Resources, Personnel
Commission 183
Order Of Court Or Hearing Officer, Use
& Disclose Department
Records 310
Order Of Reduction In Force 200

- Organizational Unit (Layoff Unit) 177
Orientation 55
Other Community & State
 Agencies 281
Out Of State Providers 111
Out Of State Wagering 106
Out-Of-State & Interstate Wagering,
 Simulcast 109
Out-Of-State Hospitals Eligible For
 Mandatory DSH Payments 287
Overissuance Due To Incorrect Sponsor
 Data 237
Overtime, Section 67-5302(19), Idaho
 Code 177
Overview Of Procedures, Problem
 Solving 206
Ownership Or Control Interest 250
- P**
- PCS Record Requirement - Participant
 In His Own Home 269
Paid Or Reimbursed Dependent
 Care 235
Para-Educator 55
Para-Educator To Teacher 86
Paraprofessional 291
Paraprofessionals 298
Parent To Attend Live Fire Exercise
 With Student 133
Parental Consent To Release
 Information 281
Parental Notification 280
Pari-Mutuel Inspector, Simulcast
 Operator 109
Participant Choice Of Service
 Coordinators & Providers 297
Participant Eligibility
 Determination 264
Participant In A Certified Family
 Home 269
Participant In A Residential Or Assisted
 Living Facility 269
Participate In JSAP Or Another Work
 Program 232
Participate In Work Opportunities, Must
 Comply With ABAWD Work
 Requirements 232
Pay Line Exception 177
Payment For Service Coordination 300
Payment For Services, Infant Toddler
 Program 279
Payment Limitations 300
Payment Methodology, Surgical
 Procedures, Medical Assistance 256
Payment of Fees Required, User Access
 Fees, ILETS Network 126
Payments On Winning Pari-Mutuel
 Wagers 116
Payments Under Title I 233
Pedagogy 55
Penalty Exceptions For Asset
 Transfers 242
Pending Investigation, Use & Disclose
 Department Records 315
Performance Bonuses 186
Performance Evaluations 211
Performance Standards For A Primary
 Location 171
Permanent Status & Expedited
 Layoff 194
Permissive Exclusions From The
 Medicaid Program, Persons Or
 Entities, Medical Assistance 253
Permits For Controlled Hunts, Taking
 Of Big Game Animals/Idaho 145
Person 250
Person Refusing To Provide SSN, Food
 Stamp/Disqualified Household
 Members 231
Personal Assistance Agency
 (PAA) 264
Personal Care Services 292
Personal Care Services (PCS) 263
Persons Disqualified As Food Stamp
 Household Members 231
Persons With Citizenship Questionable,
 Food Stamp/Disqualified Household
 Members 231
Persons With IPV, Food Stamp/
 Disqualified Household
 Members 231
Petition For Review Procedure, Problem
 Solving & Due Process
 Procedures 209
Petitioner 32
Petitions, Public Works Contractors
 License Board 33
Philosophy 65
Philosophy, Assessment In The Public
 Schools 90
Physical Education (PE) 65
Physical Education/Health 65
Physical Impairment 70
Physical Science 65
Physical Security Standards, ILETS
 Security 130
Physics 65
Phytosanitary Certificates, Fees &
 Charges, Phytosanitary & Post-Entry
 Certification Rules 19
Phytosanitary Certification & Like
 Inspections & Official Treatment
 Observations, Fees & Charges,
 Phytosanitary & Post-Entry
 Certification Rules 19
Place Of Service Delivery 266
Placement On Register 191
Placement On Register With
 Reemployment Preference 200
Planning & Service Area (PSA)
 Designation, AAA Operations 164
Plant Pathological Laboratory Services,
 Fees & Charges, Phytosanitary &
 Post-Entry Certification Rules 20
Plant Pathological Laboratory Services,
 Fees & Charges, The Planting Of
 Beans 23
Policy Making Authority 217
Political Science 65
Position, Classified 178
Possession, Consumption, & Sale Of
 Alcoholic Beverages At Public
 Higher Education Institutions 52
Post-Entry Quarantine Inspections, Fees
 & Charges, Phytosanitary & Post-
 Entry Certification Rules 20
Posting Of Promotional
 Announcements, Recruitment
 Examination 187
Postsecondary Specialist 83
Poverty Rates, ICCP 320
Powers & Duties, Chairman, & Ad Hoc
 Advisory Committees 124
Practitioner Of The Healing Arts 291
Preference Points, Veterans' Preference,
 Idaho Resident 179
Previous License Null & Void 37
Prices, Published List, Liquor
 Dispensary 220
Principal Residence 114
Principal Residence Address 106
Principle Residence 112
Prior Authorization For Service
 Coordination Services 292
Priority for Reemployment By Agency
 That Conducted The Layoff 201
Probability Sampling, Potential

- Instances Of Fraud, Abuse,
Misconduct 251
- Probationary Period 180
- Probationary Period Required,
Adequate Eligibility Registers
Exist 193
- Probationary Periods, Classified
Position 202
- Probationary Promotions 204
- Problem-Solving & Due Process
Procedures 206
- Procedure For Award Of Attorney Fees
& Costs, Problem Solving & Due
Process Procedures 209
- Procedures For Requesting
Information 317
- Proceedings For Disciplinary
Proceedings, Public Works
Contractors License Board 42
- Professional Education Core
Requirements 60, 61
- Professional Education
Requirements 60
- Professional-Technical Administrator
Certificate 71
- Program 250
- Progress Review 298
- Prohibited Questions, Job
Applications 179
- Prohibition On Disclosure 313
- Project-Exempt Appointments 195
- Promote & Advertise 115
- Promotion 178
- Promotion Of Entrance Probationary
Employee 188
- Promotion, In-Grade 178
- Promotions 204
- Proof Of Application For An SSN For A
Newborn, Food Stamps 227
- Proper Identification 106
- Prospective Rate Treatment, Special
Rates, Director Authority 284
- Provider Agreement Suspension,
Suspected Case Of Fraud Or Abuse,
Medical Assistance 252
- Provider Agreement, Ambulatory
Surgical Center 256
- Provider Coverage Limitations 269
- Provider Qualifications For Personal
Assistants 267
- Provider Responsibility For
Notification 269
- Provider Staff Qualifications 277
- Provisional Appointment 193
- Provisional Endorsement - School
Nurse 68
- Provisions, Simulcast Operator 108
- Psychosocial Rehabilitation (PSR) 273
- Psychosocial Rehabilitation (PSR)
Services Description 276
- Psychotherapy Notes 307
- Psychotherapy Notes, Use & Disclose
Department Records 309
- Pupil Personnel Services Certificate 68
- Putative Father 309
- Q**
- Qualified Non-Citizen Children 230
- Qualified Non-Citizen For At Least Five
Years 230
- Qualified Non-Citizen Seniors 230
- Qualified Non-Citizens Receiving
Disability-Related Assistance 230
- Qualified Subscriber Based
Service 106
- R**
- Race Meet Licensee 106
- Race Off, Stake Race Is Declared Off,
Stake Races, Horse Racing 100
- Rating 178
- Real Estate Contract Income 240
- Reasonable Accommodation 178
- Reasonable Accommodations/
ADA 217
- Reasons For Use, Sick Leave 212
- Reclassification Of A Position 178
- Reclassification Of An Employee 178
- Reclassification Of Positions, Human
Resources, Personnel
Commission 181
- Recommended Or Referred By A
Physician Or Other Practitioner of the
Healing Arts 273
- Record Of Expenditures, Business
Enterprise Program, Blind & Visually
Impaired 171
- Record Requirements, IEP 280
- Records Of Decedents, Use & Disclose
Department Records 315
- Records, Service 212
- Recoup & Recoupment 250
- Reduction In Force 197
- Reduction In Force Determination &
Notification 200
- Reduction In Pay 178
- Reduction Of Hours Worked 198
- Reduction Of Salary 185
- Reemployment Preference
Register 193
- References, Public Works Contractors
License Board 37
- Referrals From Federal Agencies On
Discrimination Complaints 210
- Referred By A Physician Or Other
Practitioner Of The Healing
Arts 272
- Refugees & Others Fleeing
Persecution 230
- Refunds Of Controlled Hunt Fees,
Taking Of Big Game Animals/
Idaho 148
- Refusal To Enter Into An Agreement,
Medical Assistance 254
- Refuse To Accept 116
- Register 178
- Registrar 309
- Registry Of Putative Fathers 317
- Reimbursable Services, School Based
Programs 273
- Reimbursements 234
- Reinstatement 178
- Reinstatement Prohibited 195
- Reinstatements, Current, Former
Employee 195
- Relevant Labor Markets For
Classifications Up To Two Hundred
& Seventy Points 182
- Relief Shift Employee 178
- Religious Leave 216
- Removal Of Insignia, Commercial
Coaches 29
- Removal Of Names, Eligibility
Registers 191
- Removal Of Records From Provider's
Premises 250
- Report Of Disclosures Of Health
Information, Use & Disclose
Department Records 314
- Reporting Crime In Emergencies, Use &
Disclose Department Records 313
- Reporting Of Crime On Premises, Use
& Disclose Department
Records 313
- Reporting Requirements, AAA
Operations 168
- Request For Division of Building Safety

Inspection, HVAC 49
Request For Report Of Disclosures, Use
& Disclose Department
Records 315
Requests For Postponement & Other
Motions, Petition For Review
Procedure, Problem Solving & Due
Process Procedures 210
Required Insignia, Modular
Buildings 26
Required Inspections, HVAC 49
Requirements For Cooperation With &
Notification Of Parents &
Agencies 280
Requirements For HVAC
Contractor 46
Requirements For HVAC
Journeyman 48
Requirements For HVAC Specialty
Contractor 47
Rescission & Reinstatement,
Resignation 196
Residence Outside The State Of
Idaho 114
Residential Single & Duplex Family
Dwelling Permit & Inspection Fees,
HVAC 49
Residents Of High Unemployment
Areas, JSAP 232
Residents Of The State Of Idaho 113
Residents Qualifying, Special Rates,
Director Authority 284
Resignation, Classified Employee 196
Resignation, Voluntary Quit 178
Resource Limit 241
Resources Defined, AABD 239
Resources Of Resident 240
Respondent 178
Restaurant 119
Restriction On Disclosure Of Health
Information, Use & Disclose
Department Records 310
Retail Stores, Liquor Dispensary 219
Retention Of Evaluation,
Performance 211
Retirement Benefits Paid To Former
Spouse Or Third Party 233
Return From Military Duty,
Reinstatement, Former
Employee 195
Return To Register 201
Review & Appeal, Examinations 189

Review Of Examination Content &
Scoring Material, Review &
Appeals 189
Review Of Schedule Of Funds, Business
Enterprise Program, Blind & Visually
Impaired 171
Review, Contested Case 35
Revision Of Classification
Specifications, Eligibility
Registers 192
Revocation Of AAA Designation 164
Revocation Of An Authorization, Use &
Disclose Department Records 309
Revocation Of Licenses & Permits,
Idaho Commercial Fishing 160
Rewards 96
Rod & Reel & Experimental Gear, For
Lake Trout Only 161

S

S.E. Idaho License/Tag Application &
Drawing 139
SSI Number Requirement 239
SSN Requirement Waived 222, 239
SSN Requirement, Food Stamps 226
SSN Requirement, TAFI Eligibility
Criteria 247
SSN Requirements For Expedited Food
Stamp Service 227
Safe Harbor Provision 97
Salaries For Temporary
Appointments 185
Salary After Reappointment From
Layoff, Compensation Plan 183
Salary Schedule 183
Salary Upon Downward Reassignment,
Compensation Plan 183
Salary Upon Reinstatement,
Compensation Plan 183
Salary Upon Return From Military
Duty, Compensation Plan 184
Salary Upon Transfer, Compensation
Plan 183
Salary, Acting Capacity 197
Sale Of Unsold Nonresident Deer Tags
To Residents 139
Sanction 250
Satellite Facility, Intrastate Wagering
Facility, Extended Wagering
Facility 106
Satellite Transponder,
Transponder 107
Satisfaction With Service 299

School Facilities, Health & Safety 75
School Improvement 97
School Nurse Endorsement 68
School Principal Endorsement 66
School Psychologist Endorsement 68
School Social Worker Endorsement 69
School-Based Health Related Services
Provided By Idaho Public School
Districts & The Idaho Infant Toddler
Program Under The Individuals With
Disabilities Education Act
(IDEA) 272
Scoring & Report Formats, Assessment
In The Public Schools 91
Scoring Of Examinations 189
Seasonal Appointment 194
Secondary Language Arts &
Communication, High School
Graduation Standards 89
Secure Personal Identification
Code 107, 111
Seine Nets, Idaho Commercial Fishing
Areas 160
Self-Employment Income, Earned
Income 232
Separation During Probation 203
Separation Upon Failure To Return To
Work 214
Separation, Seasonal Appointment 194
Serial Number, Commercial
Coaches 29
Serious Threat To Health Or Safety, Use
& Disclose Department Records,
Exceptions 313
Seriously Emotionally Disturbed 69
Service Coordination 291
Service Coordination During
Institutionalization 300
Service Coordination For Personal
Assistance Services 299
Service Coordination For Persons With
Mental Illness 299
Service Coordination Functions 294
Service Coordinator 291
Service Coordinator Contact &
Availability 296
Service Coordinator
Qualifications 297
Service Delivery Based On Plan Of Care
Or NSA 266
Service Detail Reports, IEP 280
Service Limitations 265

- Service Plan 299
Service Plan Content For Individuals
 Receiving Personal Assistance
 Services 296
Service Plan Content For Individuals
 With Developmental
 Disabilities 296
Service Plan Content For Individuals
 With Severe & Persistent Mental
 Illness 296
Service Plan Development 295
Service Plan Development For EPSDT
 Service Coordination 296
Service Priority & Appeals, AAA
 Operations 168
Service Supervision 267
Service-Specific Eligibility 273
Services Delivered Prior To
 Assessment 300
Services, Statewide Testing 92
Setting Aside Of Funds, Business
 Enterprise Program, Blind & Visually
 Impaired 171
Severe Retardation 70
Sexual Harassment & Other Illegal
 Discrimination 217
Shall Not Accept Wagers In Excess Of
 Account Balance 113
Shift Differential 186
Shift Pay Rate 186
Short Range Weapon, Unlawful
 Methods/Taking Of Big Game
 Animals/Idaho 150
Sick Leave Abuse 213
Sick Leave, Earned 212
Simulcast 107
Simulcast Operator 107
Simulcast Service Supplier 107
Site Location, Retail Stores, Liquor
 Dispensary 219
Site Selection Criteria, Liquor
 Dispensary Retail 219
Sliding Fee Schedules, Families Eligible
 For ICCP 320
Social Security Number Requirement,
 Eligibility For Medicaid For
 Families, Children 222
Social Studies, High School Graduation
 Standards 89
Sold, Stake Races, Horse Racing 100
Special Bighorn Sheep Permit/Tag 141
Special Leaves 214
Special Operation Iraqi Freedom
 Refund & Rain Check 140
Special Orders, Liquor Dispensary
 Retail 219
Special Provisions Covered In A
 Petition To Change Or Add Types Of
 Construction, Public Works
 Contractors License Board 34
Special Rates, Director Authority 283
Specialty Subcontractors, Public Works
 Contractors License Board 41
Speech-Language Pathologist
 Endorsement 69
Sponsored Legal Noncitizens 235
Spouse Can Give Care 235
Stake Races, Horse Racing 100
Standard Calculation Of Pay 184
Standard Elementary Certificate 59
Standard Occupational Specialist
 Certificate 72
Standard Secondary Certificate 61
Starting Salary 183
Starting Salary, Compensation
 Plan 183
State Board Of Education Professional
 Development Requirement,
 Certificate Renewal 73
State Board Of Education Requirements
 For Professional Growth,
 Recertification 73
State Plan 250
Statewide Promotional Registers 190
Status & Tenure 204
Stock Transfer 119
Student Achievement Levels 93
Subcontract Limit, Public Works
 Contractors License Board 41
Subject Areas, Curricular Materials 98
Substance Abuse, Use & Disclose
 Department Records 317
Superintendent Endorsement 67
Supervision Of Service
 Coordination 298
Supervisor Qualifications 298
Supervisor/Coordinator Of Special
 Education Endorsement 70
Supervisors' Requirements 211
Supplemental Education Services In
 Reading & Math 97
Suspension 178
Suspension For Investigation 206
Suspension Of Payments Pending
 Investigation, Medical
 Assistance 252
Suspension On Felony Charges 206
- T**
- Tag Quotas, Nonresident Deer/Elk 138
Tags, Fees & Charges, The Planting Of
 Beans 22
Teacher Preparation Through Degreed
 Program 70
Teacher To New Certification 85
Teacher Trainee Program 84
Technical Assistance Plan 97
Temporary Appointments 194
Temporary Merit Increases 185
Tenure Of Employment 204
Terminal Agency Coordinators,
 Terminal Access To The ILETS
 Network 127
Terminated Provider Agreement 254
Termination 178
Termination Of Parental Rights 317
Terms Of Mandatory Exclusions From
 The Medicaid Program, Medical
 Assistance 253
Test Security, Validity & Reliability 92
Testing Population, Assessment In The
 Public Schools 90
The Department Of Education,
 Authorized To Issue Idaho
 Certificates 55
The Official Vehicle For The Approval
 Of Existing Teacher Education
 Programs 74
The State Division Of Professional-
 Technical Education, Vocational-
 Technical Program 55
Third Party Payments 234
Time & Place Of Service 298
Total Bid Cost 37
Total Take-Out Rates For Non-Merged
 Pools 115
Traded Time 179
Trainer, Separately Owned Horses
 Trained By The Same Trainer 100
Training Allowances 233
Transfer 179
Transfer Between Departments 196
Transfer From Spouse, Assets 243
Transfer To Child, Assets 243
Transfers, Current Employee 195
Transfers, Reemployment &
 Promotions Between

Departments 212
Traumatic Brain Injury (TBI)
Waiver 242
Treatment Of The Special Rate Cost For
Future Rate Setting Periods, Special
Rates, Director Authority 285
Trust For Disabled Person 244
Trust Managed By Non-Profit
Association For Disabled
Person 245
Two Or More Licensees 37
Type 4 License Holder 37
Types Of Eligibility Registers 190
Types Of Probationary Periods 202

U

U.S. Citizen 230
U.S. National 230
Underfill 179
Undue Hardship, Denying
Eligibility 243
Unlawful Methods Of Take/Taking Of
Big Game Animals/Idaho 148
Unlicensed Contractors 42
Unsatisfactory Performance During A
Promotion Probation Period 203
Unused Medication, Residential Or
Assisted Living Facilities 302
Updating Identifying Information 314
Uplink 107
Use & Disclosure Of Confidential
Information, Use & Disclose
Department Records 310
Use Of Evaluations, Performance 211
Use Of Leave In A Workers
Compensation Claim 213
Use Of Promotional Registers 204
Use Of Registers With Reemployment
Preference Requirements 201
Use Of Sick Leave, Maternity &
Paternity Leave 214
User Access Fees, ILETS
Network 126
User Agency Sanctions, ILETS
Network 131
User Responsibilities, Terminal Access
To The ILETS Network 127

V

Vendor Payment, Dependent Care 235
Vendor Payments, Excluded
Income 233
Verification Of Data 317

Veteran Of The U.S. Armed
Forces 230
Veterans' Preference For Initial
Appointment Only 191
Veterans' Preference,
Examinations 189
Veterans' Preference, Placement On
Register 191
Veterans' Preference, Idaho
Resident 179
Victim Of Other Crime, Use & Disclose
Department Records 313
Victim Of Severe Form Of
Trafficking 231
Video Record, Simulcast Operator 109
Visual Impairment 69
Voluntary Demotion In Lieu Of Layoff,
Employee With Permanent
Status 200, 202
Voluntary Quit Or Reduction Of Hours
Of Work, Food Stamp/Disqualified
Household Members 231

W

Wagering, Simulcast Operator 109
Wages Or Salary 232
Waiver Services 292
Waiver Services Needed 242
Where The Wager Is Considered To
Have Been Made 115
Withdrawal Slip 107
Women, Infants & Children (WIC)
Program 318
Work At Least Eighty Hours Per Month,
ABAWD Work Requirement 232
Work Experience & Supervision 297
Work-Based Learning Coordinator
Endorsement 71
Workers Compensation &
Disability 213
Workweek 179
Written Statements 116