

IDAHO ADMINISTRATIVE BULLETIN

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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 rule-making 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 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 rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 05-1 refers to the first Bulletin issued in calendar year 2005; Bulletin 06-1 refers to the first Bulletin issued in calendar year 2006. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 05-1 refers to January 2005; Volume No. 05-2 refers to February 2005; and so forth. Example: The Bulletin published in January of 2006 is cited as Volume 06-1. The December 2005 Bulletin is cited as Volume 05-12.

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 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 Rulemaking Index of Idaho Administrative Rules**, 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, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the 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 the 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 consensus on the content of a 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 wherein 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. This notice must include:

- a) the specific statutory authority (from Idaho Code) 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 as provided in Section 67-5222, Idaho Code; 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. 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) 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 legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law required 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 the proposed rule, the rulemaking can be done concurrently as a proposed/temporary 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 become 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 Rulemaking". This includes:

- a) a statement giving 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;*
- 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 change 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 Rulemaking" 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 an 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 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 that 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, Twin Falls, Lewiston and East Bonner County 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 83720-00306, telephone (208) 332-1820.

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

The Idaho 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 are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>

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 38.07.01.200.02.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 Administrations's Division of Purchasing

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

"**200.**" refers to Major Section 200, "Content of the Invitation to Bid"

"**02.**" refers to Subsection 200.02.

"**c.**" refers to Subsection 200.02.c.

"**ii.**" refers to Subsection 200.02.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 "-", (38-0501-0501). 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. 38-0501-0501"

"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).

"0501" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2005.

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 of a rule 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."

The citation may also include the IDAPA, Title, or Chapter number, 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 rule.

"01" denotes the Chapter number of the rule.

"201" denotes the main Section number of the rule to which the citation refers.

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 2006

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 06-1 | January 2006 | *November 19, 2005 | January 4, 2006 | January 25, 2006 |
| 06-2 | February 2006 | January 5, 2006 | February 1, 2006 | February 22, 2006 |
| 06-3 | March 2006 | February 3, 2006 | March 1, 2006 | March 22, 2006 |
| 06-4 | April 2006 | March 3, 2006 | April 5, 2006 | April 26, 2006 |
| 06-5 | May 2006 | March 31, 2006 | May 3, 2006 | May 24, 2006 |
| 06-6 | June 2006 | May 5, 2006 | June 7, 2006 | June 28, 2006 |
| 06-7 | July 2006 | June 2, 2006 | July 5, 2006 | July 26, 2006 |
| 06-8 | August 2006 | June 30, 2006 | August 2, 2006 | August 23, 2006 |
| 06-9 | September 2006 | August 4, 2006 | September 6, 2006 | September 27, 2006 |
| 06-10 | October 2006 | **August 23, 2006 | October 4, 2006 | October 25, 2006 |
| 06-11 | November 2006 | October 6, 2006 | November 1, 2006 | November 22, 2006 |
| 06-12 | December 2006 | November 3, 2006 | December 6, 2006 | December 27, 2006 |

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2007

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 07-1 | January 2007 | *November 15, 2006 | January 3, 2007 | January 24, 2007 |
| 07-2 | February 2007 | January 5, 2007 | February 7, 2007 | February 28, 2007 |
| 07-3 | March 2007 | February 2, 2007 | March 7, 2007 | March 28, 2007 |
| 07-4 | April 2007 | March 2, 2007 | April 4, 2007 | April 26, 2007 |
| 07-5 | May 2007 | April 6, 2007 | May 2, 2007 | May 24, 2007 |
| 07-6 | June 2007 | May 4, 2007 | June 6, 2007 | June 28, 2007 |
| 07-7 | July 2007 | June 1, 2007 | July 4, 2007 | July 26, 2007 |
| 07-8 | August 2007 | June 29, 2007 | August 1, 2007 | August 23, 2007 |
| 07-9 | September 2007 | August 3, 2007 | September 5, 2007 | September 27, 2007 |
| 07-10 | October 2007 | **August 22, 2007 | October 3, 2007 | October 25, 2007 |
| 07-11 | November 2007 | October 5, 2007 | November 7, 2007 | November 22, 2007 |
| 07-12 | December 2007 | November 2, 2007 | December 5, 2007 | December 27, 2006 |

****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.***

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THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2006-25

**DIRECTING THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY TO INITIATE RULEMAKING
OPTING IDAHO OUT OF THE CLEAN AIR ACT MERCURY CAP AND TRADE RULE**

WHEREAS, the United States Environmental Protection Agency (EPA) has developed a national rule regulating mercury emissions from energy producing coal-fired utilities; and

WHEREAS, the national rule allows states to choose whether they want to opt into an interstate cap and trade program; and

WHEREAS, if the State does not formally opt-out of the trading program, the EPA will initiate the process to opt Idaho into the trading program; and

WHEREAS, the decision to opt-in or opt-out of the Clean Air Act Mercury Cap and Trade Rule has been of great interest throughout the State;

NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby direct the Idaho Department of Environmental Quality to initiate rulemaking, opting the State of Idaho out of the Clean Air Act Mercury Cap and Trade Rule.



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 9th day of August, in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

JAMES E. RISCH
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2006-26

**DIRECTING STATE AGENCIES TO CONSULT WITH IDAHO COUNTIES
ABOUT MOSQUITO ABATEMENT AND WEST NILE VIRUS**

WHEREAS, there is risk to the public well-being from an outbreak of West Nile Virus; and

WHEREAS, mosquito infestations in counties across the State have directly contributed to a large number of confirmed West Nile cases; and

WHEREAS, the imminent threat of widespread illness and potential loss of life exist as a result of West Nile Virus; and

WHEREAS, there is peril to public safety which could be beyond the capacity of the services of impacted counties; and

WHEREAS, the abatement of mosquitoes by extraordinary means may be necessary to protect public health;

NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by authority vested in me under the Constitution and laws of the State of Idaho do hereby order:

The Departments of Agriculture, Fish and Game, Health and Welfare, Environmental Quality, and the Idaho Bureau of Homeland Security shall consult with impacted Idaho Counties to assess and consider options for mosquito abatement in response to recent outbreaks of West Nile Virus.



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 11th day of August in the year of our Lord two thousand and six and of the Independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

*JAMES E. RISCH
GOVERNOR*

*BEN YSURSA
SECRETARY OF STATE*

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2006-27

AUTHORIZING THE TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT

WHEREAS, tremendous financial obligations and expenses have been incurred by various departments, agencies, and counties in responding to and assisting in efforts to deal with the extreme threat to public safety, health, property and the environment posed by declared disaster emergencies in Idaho; and

WHEREAS, all funds in the Disaster Emergency Account created by title 46, section 1005A of the Idaho Code have or soon will be expended; and

WHEREAS, funds in the General Fund are available to transfer to the Disaster Emergency Account under the requirements set forth in 46-1005A(2)(b); and

WHEREAS, it is my judgment, as Governor of the State of Idaho, that any moneys transferred from the General Fund up to the limits provided below will not be required to support the current year's appropriations.

NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order as follows:

1. The State Controller is directed to transfer money from the General Fund to the Disaster Emergency Account in such amount and at such times as directed by me or my designee, the Administrator of the Division of Financial Management. In no event shall more than one million one hundred twenty-five thousand (\$1,125,000) be transferred for the purposes of this executive order from the General Fund to the Disaster Emergency Account during the current fiscal year.
2. In no event may the revenues made available under this Executive Order exceed, during any fiscal year, one percent (1%) of the annual appropriation of the General Fund Account moneys for the fiscal year.



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 14th day of August, in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

JAMES E. RISCH
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2006-28

CONTINUING THE IDAHO INVASIVE SPECIES COUNCIL

WHEREAS, the land, water, and other resources of Idaho are being severely impacted by the invasion of an increasing number of harmful, nonnative plant and animal species; and

WHEREAS, these impacts are resulting in damage to Idaho's environment and causing economic hardships to public, private, and tribal owners; and

WHEREAS, representatives of public and private organizations with an interest in controlling and preventing the spread of harmful invasive species that continue to need a mechanism for cooperation, collaboration, and development of statewide plans of action to meet this threat; and

WHEREAS, the Idaho Invasive Species Council serves as a mechanism for cooperation, collaboration, and development of statewide plans of action to meet this threat; and

WHEREAS, multiple agencies, authorities, and information sources are used to implement a wide variety of invasive species management programs; and

WHEREAS, a need exists to build upon the strength of existing invasive species programs, to improve areas that are weaker, and integrate efforts into an efficient unified state response to the threat of invasive species;

NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order the following:

the continuation of the Idaho Invasive Species Council (the Council) as a joint effort between local, tribal, state, and federal governments, as well as the profit and not-for-profit private sectors. The purpose of the Council is to foster coordinated approaches that support local initiative for the prevention and control of invasive species.

The Council's responsibilities shall be:

- 1. The purpose of the Council is to provide policy level direction and planning for combating harmful invasive species infestations throughout the state and for preventing the introduction of others that may be potentially harmful.*
- 2. To serve as a nonpartisan forum for identifying and understanding invasive species issues from all perspectives.*
- 3. To implement Idaho's Action Plan for Invasive Species.*
- 4. To continue the efforts of the Idaho Invasive Species Council to implement actions proposed in the 2005 Strategic Action Plan for Invasive Species.*
- 5. To take measures that will encourage control and prevention of harmful non-native species;*
- 6. To organize and streamline the process for identifying and controlling invasive species;*
- 7. To consider ways to halt the spread of invasive species as well as finding possible ways to bring current problems under control;*
- 8. To implement Idaho's Action Plan for Invasive Species.*

Membership shall include a representative from the Office of the Governor and the directors of the following State entities:

- 1. Department of Agriculture*
- 2. Department of Environmental Quality*
- 3. Department of Parks and Recreation*
- 4. Department of Fish and Game*
- 5. Department of Lands*
- 6. Department of Water Resources*
- 7. Department of Commerce & Labor*
- 8. Department of Health and Welfare*
- 9. Idaho Transportation Department*

Representatives and members of federal entities, local government organizations, tribal governments, Idaho universities and private and not-for-profit organizations with an interest in the well being of Idaho pertaining to invasive species shall be invited to participate.

Additional Members may be added by consensus of the Council.

The Council shall meet no less than twice annually. The chairman of the council shall be the director of the Idaho Department of Agriculture or his/her representative.

The Council shall submit a report of its activities to the Governor and the Legislature annually.



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 10th day of August in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

JAMES E. RISCH
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2006-30

ESTABLISHING THE GOVERNOR'S TASK FORCE FOR CHILDREN AT RISK

WHEREAS, Idaho's children are our most valuable and most vulnerable resource; and

WHEREAS, crimes of abuse and neglect can psychologically and physically harm innocent children for life, depriving them of the opportunity to live happy and productive lives; and

WHEREAS, abuse and neglect of children have been recognized to be multi-generational problems; and

WHEREAS, thousands of incidents of child abuse and neglect occur each year in Idaho; and

WHEREAS, the system that responds to reports of child abuse and neglect requires more effective and efficient statewide coordination and consistent monitoring in order to better protect children; and

WHEREAS, in order to protect all children, those who commit crimes against children need to be held accountable for their actions; and

WHEREAS, the child victims of abuse, neglect, and domestic violence must receive immediate and adequate protection from continued maltreatment; and

WHEREAS, it is the responsibility of all Idahoans to provide a community system of support and protection for these children; and

WHEREAS, the protection of children from abuse and neglect is in the best interest of all Idahoans;

NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuance of the Governor's Task Force for Children at Risk.

The Task Force's responsibilities are:

- 1. To review existing systems and procedures and encourage improvements in the investigative, administrative, and judicial handling of cases of child abuse and neglect, particularly child sexual abuse to limit the trauma to the child victim;*
- 2. To evaluate, propose, and encourage cooperation between persons and agencies involved in cases of child abuse and domestic violence evaluations;*
- 3. To investigate and recommend optimum models of prevention, evaluation and treatment of victims and offenders;*
- 4. To establish procedures for reviewing child fatalities and substantial or severe injuries where the circumstances of the death or injury suggest the possibility of child abuse; and*
- 5. To study, propose, and encourage means to establish a highly professional, stable work force devoted to working with child abuse cases and issues.*

The Task Force shall be composed of up to 16 members appointed by the Governor. The membership shall include, but will not be limited to, the following with consideration of cultural and geographical representation:

- A Judge (Handling civil and criminal cases)*
- A Prosecuting Attorney*
- At least one representative of the Division of Family and Community Services of the Department of Health and Welfare*
- A law enforcement representative with experience in child abuse cases*

- *A representative of the Department of Correction's*
- *Department of Probation and Parole*
- *A juvenile correction or probation worker*
- *A defense attorney*
- *A pediatrician*
- *A mental health professional specializing in therapy for abused children*
- *A parent or parent group representative*
- *An individual experienced in working with children with disabilities*
- *A Court Appointed Special Advocate (CASA) representative*
- *A child advocate Attorney for children*

The members of the Task Force shall serve at the pleasure of the Governor for a four-year term. Reappointment is at the discretion of the Governor. Members of the Task Force shall elect their chair from among their members.

The Department of Health and Welfare shall be the lead agency, providing support for the Task Force, and shall maintain office staff to carry out the activities directed by the Task Force, as funding is available.



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 28th day of August in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.

JAMES E. RISCH
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 01 - BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-0601

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 54-204(1) 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 18, 2006.

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:

Update the standards being incorporated by reference. Idaho Code requires agencies to cite the specific year when we incorporate standards by reference. We incorporate by reference CPE, AICPA and PCAOB standards. The CPE Standards are still accurate, but the AICPA and PCAOB Standards need to be updated from 2006 to 2007.

Change "Northwest Association of Schools and Colleges" to "Northwest Commission on Colleges and Universities." CPA Exam candidates must obtain college education from schools that meet accreditation standards. An accrediting body referred to in our rules has changed its name from the "Northwest Association of Schools and Colleges" to the "Northwest Commission on Colleges and Universities."

Remove the National Society of Accountants from our list of approved Administering Organizations. CPA Firms must undergo Peer Reviews performed by an approved Administering Organization. The National Society of Accountants is no longer performing Peer Reviews, and does not intend to offer the service in the future.

Change "fee" to "fine" for non-compliance with CPE reporting. The penalty for licensees who do not complete their Continuing Professional Education and timely report it is currently referred to as a "fee" in our rules. Because this is an act of non-compliance with a regulatory requirement that is designed to maintain professional competency, it should be referred to as a "fine."

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were discussed in public meetings and newsletters, without any objections from the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

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 25, 2006.

DATED this 18th day of August, 2006.

Barbara R. Porter, Executive Director
1109 Main Street, Owyhee Plaza Suite 470
Phone: 208-334-2490 / Fax: 208-334-2615

Idaho State Board of Accountancy
PO Box 83720, Boise, Idaho 83720-0002
E-mail: bporter@isba.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 01-0101-0601

004. INCORPORATION BY REFERENCE (RULE 004).

The following documents are hereby incorporated by reference into IDAPA 01.01.01 and can be obtained at the Board office. Licensees are required to comply with the following standards when applicable. (3-1-05)

01. AICPA Standards. 2006~~7~~ AICPA Professional Standards, except as superceded by Section 54-206(8), Idaho Code. (~~4-11-06~~)(____)

02. CPE Standards. 2002 Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. (4-2-03)

03. PCAOB Standards. 2006~~7~~ Standards issued by the Public Company Accountability Oversight Board. (~~4-11-06~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. REQUIREMENTS FOR INITIAL CERTIFIED PUBLIC ACCOUNTANT LICENSURE (RULE 300).

Applications for initial licensure shall be made on a form provided by the Board. Applicants for licensure as certified public accountants must comply with the applicable sections of the Idaho Accountancy Act and the following requirements: (4-2-03)

01. Education. (4-2-03)

a. Semester Hours. An applicant for licensure must have at least one hundred fifty (150) semester hours (or two hundred twenty-five (225) quarter hours) of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the Board. An applicant for licensure who was accepted for the May 2000 CPA Examination or prior examination does not have to fulfill additional educational requirements beyond those required at the time of acceptance to sit for the CPA Examination. (4-2-03)

b. Accreditation. The Board shall recognize: (4-2-03)

i. Any college or university accredited by the Northwest ~~Association of Schools and Colleges (NASC)~~ Commission on Colleges or Universities or any other regional accrediting association having the equivalent standards; (~~4-2-03~~)(____)

ii. Any independent senior college in Idaho certified by the State Department of Education for teacher training; and (4-2-03)

iii. Accounting and business programs accredited by the American Assembly of Collegiate Schools of Business (AACSB) or any other accrediting agency having equivalent standards. (4-2-03)

c. Education Requirement. An applicant shall be deemed to have met the education requirement if, as part of the one hundred fifty (150) semester hours of education, the applicant has met any one (1) of the following four (4) conditions: (4-2-03)

i. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency approved by the Board; (4-2-03)

ii. Earned a graduate degree from a program that is accredited in business by an accrediting agency

approved by the Board and completed at least twenty-four (24) semester hours in accounting at the undergraduate or fifteen (15) semester hours at the graduate level, or an equivalent combination thereof, including coverage of, but not necessarily separate courses in, the subjects of financial accounting, auditing, taxation, and management accounting; (4-2-03)

iii. Earned a baccalaureate degree from a program that is accredited in business by an accrediting agency approved by the Board and completed twenty-four (24) semester hours in accounting at the undergraduate or graduate level including coverage of, but not necessarily separate courses in, the subjects of financial accounting, auditing, taxation, and management accounting; and completed at least twenty-four (24) semester hours in business courses (other than accounting courses) at the undergraduate or graduate level; or (4-2-03)

iv. Earned a baccalaureate or higher degree and completed at least twenty-four (24) semester hours in accounting at the upper division or graduate level at an institution approved by the Board and including coverage of, but not necessarily separate courses in, the subjects of financial accounting, auditing, taxation, and management accounting; and completed at least twenty-four (24) semester hours in business courses (other than accounting courses) at the undergraduate or graduate level. (4-2-03)

02. Experience. As prescribed in Subchapter C. (4-2-03)

03. Examination on Code of Professional Conduct. An applicant for initial licensure shall successfully complete a course in professional ethics, that is acceptable to the Board, at any time before a license will be issued. (4-2-03)

04. Initial License Application Fee. As prescribed in Rule 701. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

607. ADMINISTERING ORGANIZATIONS (RULE 607).

This section shall not require any licensee of a firm to become a member of any administering organization. Qualified administering organizations which register with, and are approved by the Board based on their adherence to the AICPA Peer Review minimum standards, shall include the: (4-2-03)

01. Monitoring Organizations. AICPA practice monitoring organizations such as the Center for Public Company Audit Firms (CPCAF). (4-6-05)

02. Peer Review Program. Peer review program of the American Institute of Certified Public Accountants (AICPA). (4-2-03)

03. State CPA Societies. State CPA societies fully involved in the administration of the AICPA Peer Review Program and their successor organizations which meet the minimum standards. (4-2-03)

~~**04. National Society of Accountants (NSA).** Peer Review Program of NSA which adheres to the AICPA Peer Review minimum standards. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

703. LATE FEES AND FINES (RULE 703).

01. Late License and Practice Privileges Renewal Fee. The fee for late license renewal or practice privileges renewal is one hundred dollars (\$100). (4-2-03)

02. Late Non-Compliance With CPE Filing Fee Deadline. The ~~fee~~ fine for ~~late non-compliance with~~

CPE filing deadline is one hundred dollars (\$100) for filing anytime during the month of February, one hundred and fifty dollars (\$150) for filing anytime during the month of March, two hundred dollars (\$200) for filing anytime during the month of April, two hundred and fifty dollars (\$250) for filing anytime during the month of May, and three hundred dollars (\$300) for filing anytime during the month of June. ~~(4-2-03)~~(____)

03. Non-Compliance with Firm Registration and Peer Review. The fine shall be one hundred dollars (\$100) per licensee for each act of non-compliance defined in Rule 617. (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED™ PROMOTION PROGRAM

DOCKET NO. 02-0104-0601

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 22-112, 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 18, 2006.

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 adds a section requiring Department approval of use of logo on packaging and printed materials. It also makes a clerical revision throughout the rule changing the symbol from Idaho Preferred™ to Idaho Preferred® because the name and logo have completed the trademark process and are now registered marks.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee or charge being imposed through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: This rulemaking does not have a negative fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura M. Johnson, Section Manager or Leah Clark, Trade Specialist at (208) 332-8530.

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 25, 2006.

DATED this 25th day of August, 2006.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-0601

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.04, "Rules Governing the Idaho Preferred™® Promotion Program. (3-16-04)(_____)

02. Scope. These rules shall govern the participation in, and product selection criteria for the Idaho Preferred™® program. The program was developed by the Idaho State Department of Agriculture to identify and promote food and agricultural products from the state of Idaho, elevate consumer awareness of such products, and assist in developing opportunities for sale of such products. These rules establish the requirements for the use of the Idaho Preferred™® logo and will define eligible products, application procedures, and participation fees. (3-16-04)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey. (3-16-04)

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)

09. Department. The Idaho State Department of Agriculture. (3-16-04)

10. Director. The Director of the Idaho State Department of Agriculture or his designated agent. (3-16-04)

11. Florist Stock. All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)

12. Foodservice. A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)

13. Fresh Produce, Commodities, and Fresh Meat. Bulk or packaged agricultural products that have

been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)

14. Horticultural Products. Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)

15. Livestock. Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)

16. Livestock Product. Products produced from or related to livestock. (3-16-04)

17. Non-Food Agricultural Products. Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)

18. Supporting Organization. Any commission, association, or incorporated group supporting the efforts of the Idaho PreferredTM@ program. (~~3-16-04~~)()

19. Nursery Stock. All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)

20. Packer/Shipper. A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)

21. Participant. A person who has applied to the Department and been approved for participation in the Idaho PreferredTM@ program. (~~3-16-04~~)()

22. Person. An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (3-16-04)

23. Processed Food. Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)

24. Processor. A person engaged in the manufacturing of processed food. (3-16-04)

25. Producer. A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)

26. Retailer. A person engaged in making sales directly to consumers. (3-16-04)

27. Viticultural Products. Products produced from or related to grapes and wine. (3-16-04)

28. Wholesaler. A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

011. -- 014. (RESERVED).

015. VOLUNTARY PROGRAM.
The Idaho PreferredTM@ program is a voluntary promotion program. (~~3-16-04~~)()

016. -- 099. (RESERVED).

100. APPLICATION FOR PARTICIPATION.

01. Application Requirement. Persons interested in becoming a participant in the Idaho Preferred™® program shall do so by making application to the Department on forms established by the Director. New applications may be submitted at any time throughout the year. (3-16-04)(____)

02. Application Review and Compliance Verification. The Director, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The Director will notify the applicant in writing of the approval or denial. (3-16-04)

101. PARTICIPATION DURATION AND RENEWAL.

01. Duration. Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)

02. Renewing Participation. Renewals shall be submitted on forms established by the Director and will be due June 30. (3-16-04)

03. Reporting on Use of Logo. Participants renewing with the Department will report their use of the Idaho Preferred™® logo from the concluding program year. The report will include, but may not be limited to, data regarding the number of times the Idaho Preferred™® logo was used. (3-16-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

111. PARTICIPATION PRIVILEGES.

Participants will benefit from privileges including: (3-16-04)

01. Use of the Idaho Preferred™® Logo. Use of the Idaho Preferred™® Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (3-16-04)(____)

02. Listing. Listing In Idaho Preferred™® Product Directories. (3-16-04)(____)

03. Promotion. promotion through the Idaho Preferred™® website. (3-16-04)(____)

04. Visibility. Visibility from the department's promotion activities. (3-16-04)

05. Other Privileges. Other privileges as established by the Director. (3-16-04)

112. -- 199. (RESERVED).

200. PRODUCT QUALIFICATION.

01. Authority of Determination. The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

a. Fresh produce, commodities, and meat bearing the Idaho Preferred™® logo shall be one hundred percent (100%) Idaho grown or raised. (3-16-04)(____)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content that has been grown or raised in Idaho. The percentage of Idaho agricultural content and the percentage of value added to the product in the state of Idaho, shall total no less than eighty percent (80%) of the total value of the product. Value is determined as a percentage of the wholesale price. (3-16-04)

c. Non-food agricultural products must be at least fifty percent (50%) agricultural content by weight and that agricultural content must have been grown or raised in Idaho. (3-16-04)

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred™@ program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (~~3-16-04~~)(____)

04. Wine. Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

05. Nursery Stock. Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

06. Beef and Beef Products. Beef and beef products shall come from cattle that: (4-6-05)

a. Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred™@ logo. (~~4-6-05~~)(____)

b. Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)

c. Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)

d. Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)

07. Apicultural Products. Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)

08. Exceptions. The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

201. -- 299. (RESERVED).

300. LOGO.

The Idaho Preferred™@ logo has been registered or filed for registration by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred™@ logo. (~~3-16-04~~)(____)

01. Description of the Idaho Preferred™@ Logo. The Idaho Preferred™@ logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (~~3-16-04~~)(____)

02. Graphic Depiction of the Idaho PreferredTM® Logo:



TM®

(3-16-04)()

03. Approval for Use of Logo. Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. Participants must provide a sample of the finished packaging, labels, flyers or promotional materials to the Department. ()

301. SPECIAL PROMOTIONAL ACTIVITIES.

01. Activities. The Department may engage in special promotional activities including, but not limited to, advertising, product demonstrations, events, publicity, and cooperative activities. The Department may invite participants in the Idaho PreferredTM® program to participate in any activities. (3-16-04)()

02. Fees. The Department may assess a separate fee for any special promotional activity. This fee will not exceed the actual cost of conducting the activity. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

303. DISTRIBUTION OF PROMOTIONAL MATERIAL.

The Idaho PreferredTM® program shall have the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of an organization as defined in this chapter. (3-16-04)()

304. -- 309. (RESERVED).

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho PreferredTM® logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (3-16-04)()

311. COMPLIANCE.

01. Authority of Director. The Director shall have the authority to enter upon the premises of any participant to examine and copy any of the following items: (3-16-04)

- a. Books, papers, records, ledgers, journals, electronically or magnetically recorded data; (3-16-04)

b. Computers and computer records or memoranda bearing on the usage of the Idaho Preferred™® logo; and ~~(3-16-04)~~(____)

c. To secure all other information concerned in the enforcement of these rules. (3-16-04)

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. (3-16-04)

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred™® logo. ~~(3-16-04)~~(____)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-0602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 1, 2006.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

**October 12, 2006
6:00 p.m. - 7:00 p.m.
Nampa Civic Center
311 Third Street South
Nampa, Idaho 83651**

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To update the current rules to reflect changes authorized under HB 465 passed by the 2006 legislature. Update the label requirements for pet foods to be consistent with the Association of American Feed Control Officials (AAFCO) uniform label requirements for pet foods. Clarify that viable noxious weed seed found in a feed is an adulterant.

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:

This rule change is necessary to protect the public health, safety or welfare and confers a benefit.

FEE SUMMARY: There are no fees associated with this rule change.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Specialist, Ann Brueck, Program Specialist or Michael E. Cooper, Bureau Chief at (208) 332-8620.

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 25, 2006.

DATED this 23rd day of August 2006.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
PO Box 790
Boise, ID 83701

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0602-0602

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 25-2724~~10~~, Idaho Code. (~~4-6-05~~)(11-1-06)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.02, "Rules Pertaining to the Idaho Commercial Feed Law." (4-6-05)

02. Scope. These rules specify general commercial feed label and ingredient requirements, special requirements for cottonseed and procedures concerning detained commercial feedstuffs. These rules also apply to pet food and specialty pet food except where specifically addressed in this rule under Section 475 Pet Food and Specialty Pet Food. (~~4-6-05~~)(11-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be ~~obtained from~~ viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (~~4-6-05~~)(11-1-06)T

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the "2006 Official Publication" of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. (4-11-06)

02. The Merck Index. The "200~~76~~ Merck Index," 13~~4~~th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (~~4-6-05~~)(11-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND TERMS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 25-2703, Idaho Code. In addition as used in this chapter: (11-1-06)T

01. All Life Stages. Gestation/lactation, growth, and adult maintenance life stages. (11-1-06)T

02. Family. A group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an AAFCO feeding protocol(s). (11-1-06)T

0~~3~~3. Hay. The aerial portion of grass or herbage especially cut, cured and baled or stacked for animal feeding, without further processing. (4-6-05)

04. Immediate Container. The unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers. (11-1-06)T

05. Ingredient Statement. A collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed. (11-1-06)T

06. Principal Display Panel. The part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale. (11-1-06)T

07. Viable Noxious Weed Seed. Any seed or propagule of a noxious weed, as identified or listed by Title 22, Chapter 24, Idaho Code, or any rules promulgated thereunder, that has not been ground fine enough or otherwise treated to destroy the ability to germinate. (11-1-06)T

011. -- 049. (RESERVED).

050. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following general format. (8-16-71)

- a. Net Weight. (8-16-71)
- b. Product name and brand name if any. (8-16-71)
- c. If a drug is used: (8-16-71)
 - i. The word "Medicated" shall appear directly following and below the product name in type size, no smaller than one-half (1/2) the type size of the product name. (8-16-71)
 - ii. The purpose of medication (claim statement). (8-16-71)
 - iii. An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection 150.04. (8-16-71)
 - iv. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Sections 250 and 300 appear elsewhere on the label. (8-16-71)
- d. The guaranteed analysis of the feed as required under the provisions of Section 25-27-18(a)(3)05(1)(c) of the Commercial Feed Law include the following items, unless exempted in Subsection 050.01.d.viii., and in the order listed: ~~(8-16-71)~~(11-1-06)T
 - i. Minimum percentage of crude protein. (8-16-71)
 - ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Subsection 150.05. (8-16-71)
 - iii. Minimum percentage of crude fat. (8-16-71)
 - iv. Maximum percentage of crude fiber. (8-16-71)
 - v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. (8-16-71)
 - vi. Vitamins in such terms as specified in Subsection 150.03. (8-16-71)
 - vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. (8-16-71)
 - viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium and

Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. (8-16-71)

e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section ~~25-2748(a)(4)~~25(1)(d) of the Commercial Feed Law. ~~(8-16-71)(11-1-06)T~~

i. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Director. (8-16-71)

ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. (8-16-71)

iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. (8-16-71)

f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. (8-16-71)

g. The information required in Section ~~25-2748~~805 of the Commercial Feed Law must appear in its entirety on one (1) side of the label or on one (1) side of the container. ~~(8-16-71)(11-1-06)T~~

02. Customer Formula Invoice and Tag Requirements. (8-16-71)

a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. (8-16-71)

b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. (8-16-71)

(BREAK IN CONTINUITY OF SECTIONS)

400. ADULTERANTS.

01. Substances. For the purpose of Section ~~25-2724~~07 of the Commercial Feed Law, the terms "poisonous or deleterious substances" include, but are not limited to, the following: ~~(8-16-71)(11-1-06)T~~

a. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds two tenths percent (0.2%) for breeding and dairy cattle; three tenths percent (0.3%) for slaughter cattle; three tenths percent (0.3%) for sheep; thirty-five hundredths percent (0.35%) for lambs; forty-five hundredths percent (0.45%) for swine; and six tenths percent (0.6%) for poultry. (8-16-71)

b. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the

total ration (exclusive of roughage) above the following amounts: four thousandths percent (0.004%) for breeding and dairy cattle; nine thousandths percent (0.009%) for slaughter cattle; six thousandths percent (0.006%) for sheep; one hundredths percent (0.01%) for lambs; fifteen thousandths percent (0.015%) for swine and three hundredths percent (0.03%) for poultry. (8-16-71)

c. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per one hundred (100) pounds of body weight. (8-16-71)

d. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents. (8-16-71)

e. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds of feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine). (8-16-71)

02. Screenings or By-Products. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds. (8-16-71)

03. Viable Noxious Weed Seed. Viable noxious weed seed as defined in Subsection 010.07. (11-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

451. -- ~~499~~74. (RESERVED).

475. PET FOOD AND SPECIALTY PET FOOD.

01. Label Format and Labeling. (11-1-06)T

a. Pet food and specialty pet food shall be labeled with the following information prescribed in this rule: (11-1-06)T

i. Product name and brand name, if any, on the principal display panel as stipulated in Subsection 475.02: (11-1-06)T

ii. A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel; (11-1-06)T

iii. Quantity statement, as defined in AAFCO Model Bill Section 3(v), on the principal display panel; (11-1-06)T

iv. Guaranteed Analysis as stipulated in Subsection 475.03; (11-1-06)T

v. Ingredient statement as stipulated in Subsection 475.04.a.; (11-1-06)T

vi. A statement of nutritional adequacy or purpose if required under Subsection 475.06; (11-1-06)T

vii. Feeding directions if required under Subsection 475.07; and (11-1-06)T

viii. Name and address of the manufacturer or distributor as stipulated in Subsection 475.10. (11-1-06)T

b. When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper. (11-1-06)T

c. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package. (11-1-06)T

d. The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence. (11-1-06)T

e. No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product. (11-1-06)T

f. A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading. (11-1-06)T

g. A statement on a pet food or specialty pet food label stating "improved," "new," or similar designation shall be substantiated and limited to six (6) months production. (11-1-06)T

h. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated. (11-1-06)T

02. Brand and Product Names. (11-1-06)T

a. The words "one hundred percent (100%)," or "all," or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments. (11-1-06)T

b. An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food: (11-1-06)T

i. When the ingredient(s) derived from animals, poultry, or fish constitutes at least ninety-five percent (95%) of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least seventy percent (70%) of the total product weight. (11-1-06)T

ii. When any ingredient(s) constitutes at least twenty-five percent (25%) of the weight of the product, provided that: (11-1-06)T

(1) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredients(s) shall constitute at least ten percent (10%) of the total product weight; and (11-1-06)T

(2) A descriptor is used with the ingredient name(s). This descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include "dinner," "platter," "entree," "formula," and "recipe"; and (11-1-06)T

(3) The descriptor shall be in the same size, style, and color print as the ingredient name(s). (11-1-06)T

iii. When a combination of ingredients which are included in the product name in accordance with Subsection 475.02.b. meets all of the following: (11-1-06)T

(1) Each ingredient constitutes at least three percent (3%) of the product weight, excluding water sufficient for processing; (11-1-06)T

(2) The names of the ingredients appear in the order of their respective predominance by weight in the product; and (11-1-06)T

(3) All such ingredient names appear on the label in the same size, style, and color print. (11-1-06)T

c. When the name of any ingredient appears in the product name of a pet food or elsewhere on the product label and includes a descriptor such as “with” or similar designation, the named ingredient(s) must each constitute at least three percent (3%) of the product weight exclusive of water for processing. If the names of more than one (1) ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The three percent (3%) minimum level shall not apply to claims for nutrients, such as, but not limited to vitamins, minerals, and fatty acids, as well as condiments. The word “with,” or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

| Panel Size | Max “with claim” Type Size |
|-------------------|-----------------------------------|
| < 5 sq. in. | 1/8” |
| 5-25 sq. in. | 1/4” |
| 25-100 sq. in | 3/8” |
| 100-400 sq. in | 1/2” |
| 400 sq. in + | 1” |

(11-1-06)T

d. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following: (11-1-06)T

i. The flavor designation: (11-1-06)T

(1) Conforms to the name of the ingredient as listed in the ingredient statement; or (11-1-06)T

(2) Is identified by the source of the flavor in the ingredient statement; and (11-1-06)T

ii. The word “flavor” is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and (11-1-06)T

iii. Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request. (11-1-06)T

e. The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as specified by Subsection 475.04.a. or 475.04.b.; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if: (11-1-06)T

i. The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or (11-1-06)T

ii. It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients. (11-1-06)T

f. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Subsections 475.04.b., 475.04.c., or 475.04.d. (11-1-06)T

03. Expression of Guarantees. (11-1-06)T

a. The Guaranteed Analysis shall be listed in the following order and format unless otherwise specified in these rules: (11-1-06)T

- i. A pet food or specialty pet food label shall list the following required guarantees: (11-1-06)T
- (1) Minimum percentage of crude protein; (11-1-06)T
 - (2) Minimum percentage of crude fat; (11-1-06)T
 - (3) Maximum percentage of crude fat, if required by Subsection 475.09; (11-1-06)T
 - (4) Maximum percentage of crude fiber; (11-1-06)T
 - (5) Maximum percentage of moisture; and (11-1-06)T
 - (6) Additional guarantees shall follow moisture. (11-1-06)T
- ii. When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture. (11-1-06)T
- iii. A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog (or Cat) Food Nutrient Profiles. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in these rules, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. (11-1-06)T
- iv. A specialty pet food label shall list other required or voluntary guarantees as required by AAFCO Model Regulation 3(a)(4)(X). (11-1-06)T
- b. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein fifteen to eighteen percent (15-18%)" is prohibited. (11-1-06)T
- c. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include: (11-1-06)T
- i. Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or (11-1-06)T
 - ii. Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in AAFCO Model Regulation 4(b) when no species-specific nutrient profile has been recognized by AAFCO; and provided that: (11-1-06)T
 - iii. Mineral guarantees required by Subsections 475.03.c.i. and 475.03.c.ii. may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (11-1-06)T
 - iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (11-1-06)T
- d. The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include: (11-1-06)T
- i. Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or (11-1-06)T
 - ii. Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in AAFCO Model Regulation 4(c) when no species-specific nutrient profile has been recognized by AAFCO; and provided that: (11-1-06)T

iii. Vitamin guarantees required by Subsections 475.03.d.i. and 475.03.d.ii., may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (11-1-06)T

iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (11-1-06)T

e. When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply: (11-1-06)T

i. The product shall meet the AAFCO-recognized nutrient profile; and (11-1-06)T

ii. The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile; however, the statement that the product meets the AAFCO-recognized nutrient profile is not required provided that the nutritional adequacy statement as per Subsections 475.06.a.i. or 475.06.b.ii.(1) appears elsewhere on the product label; and (11-1-06)T

iii. The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and (11-1-06)T

iv. The statement of comparison may appear on the label separate and apart from the guaranteed analysis. (11-1-06)T

f. The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight percent (78%) or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of seventy-eight percent (78%). (11-1-06)T

g. Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement. (11-1-06)T

h. Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in AAFCO Model Regulations 4(g) and (h). (11-1-06)T

04. Ingredients. (11-1-06)T

a. Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows: (11-1-06)T

i. The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size; (11-1-06)T

ii. The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms; (11-1-06)T

iii. Ingredients shall be listed and identified by the name and definition established by AAFCO; and (11-1-06)T

iv. Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient. (11-1-06)T

b. The ingredients "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat"

or “horsemeat by-products.” (11-1-06)T

c. Brand or trade names shall not be used in the ingredient statement. (11-1-06)T

d. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following: (11-1-06)T

i. The designation is not false or misleading; (11-1-06)T

ii. The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and (11-1-06)T

iii. A reference to quality or grade of the ingredient does not appear in the ingredient statement. (11-1-06)T

05. Drugs and Pet Food Additives. (11-1-06)T

a. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets. (11-1-06)T

b. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established: (11-1-06)T

i. When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are “prior sanctioned” or “informal review sanctioned” or “generally recognized as safe” for such use; or (11-1-06)T

ii. When the pet food or specialty pet food itself is a drug or contains a drug as defined in Section 3 (g) of the Model Bill and is “generally recognized as safe and effective” for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 360(b). (11-1-06)T

c. When a drug is included in a pet food or specialty pet food, the format required by Model Regulation 3(a)(2) for labeling medicated feeds shall be used. (11-1-06)T

06. Nutritional Adequacy. (11-1-06)T

a. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” if at least one (1) of the following apply: (11-1-06)T

i. The product meets the nutrient requirements for all life stages established by an AAFCO-recognized nutrient profile; or (11-1-06)T

ii. The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (11-1-06)T

iii. The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided that: (11-1-06)T

(1) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (11-1-06)T

- (2) The family product meets the criteria for all life stages; and (11-1-06)T
- (3) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy. (11-1-06)T
- b.** The label of a pet food or specialty pet food which is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” when the product and claim meets all of the following: (11-1-06)T
- i.** The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, “complete and balanced for puppies (or kittens).” The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style and color print; and (11-1-06)T
- ii.** The product meets at least one (1) of the following: (11-1-06)T
- (1) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile; or (11-1-06)T
- (2) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (11-1-06)T
- (3) The requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing; and provided that: (11-1-06)T
- (a) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (11-1-06)T
- (b) The family product meets the criteria for such limited purpose; and (11-1-06)T
- (c) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy. (11-1-06)T
- c.** Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a “snack” or “treat.” The statement shall consist of one (1) of the following: (11-1-06)T
- i.** A claim that the dog or cat food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following: (11-1-06)T
- (1) “(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____.” (Blank is to be completed by using the stage or stages of the pet's life, such as, gestation/lactation, growth, maintenance or the words “all life stages”); or (11-1-06)T
- (2) “Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for _____.” (Blank is to be completed by using the stage or stages of the pet's life tested, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”); or (11-1-06)T
- (3) “(Name of Product) provides complete and balanced nutrition for _____.” (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words “all life stages”) and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests.” (11-1-06)T
- ii.** A nutritional or dietary claim for purposes other than those listed in Subsections 475.06.a. or

475.06.b. if the claim is scientifically substantiated; or (11-1-06)T

iii. The statement: "This product is intended for intermittent or supplemental feeding only," if a product does not meet the requirements of Subsections 475.06.a. or 475.07.b. or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding. (11-1-06)T

d. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with Subsections 475.06.c.i. or 275.06.c.iii. (11-1-06)T

e. A signed affidavit attesting that the product meets the requirements of Subsections 475.07.a. or 475.06.b.ii. shall be submitted to the Director upon request. (11-1-06)T

f. If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated. (11-1-06)T

g. The following AAFCO-recognized nutritional authority, nutrient profile, and/or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy: (11-1-06)T

i. As an AAFCO-recognized nutrient profile or nutritional authority: (11-1-06)T

(1) For dogs, the AAFCO Dog Food Nutrient Profiles; (11-1-06)T

(2) For cats, the AAFCO Cat Food Nutrient Profiles; (11-1-06)T

(3) For specialty pets, the nutrient recommendations approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that, this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended. (11-1-06)T

ii. As an AAFCO-recognized animal feeding protocol(s), the AAFCO Dog and Cat Food Feeding Protocols. (11-1-06)T

07. Feeding Directions. (11-1-06)T

a. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.c.i., except those pet foods labeled in accordance with Regulation PF7(d), shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., "adult formula"). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, "feed (weight/unit of product) per (weight only) of dog (or cat)." The frequency of feeding shall also be specified. (11-1-06)T

b. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "use only as directed by your veterinarian" may be used in lieu of feeding directions. (11-1-06)T

c. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.a., shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified. (11-1-06)T

08. Statements of Calorie Content. (11-1-06)T

a. Except as required in Subsection 475.09, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following: (11-1-06)T

i. The statement shall be separate and distinct from the Guaranteed Analysis and shall appear under the heading “Calorie Content”; (11-1-06)T

ii. The statement shall be measured in terms of metabolizable energy (ME) on an “as fed” basis and must be expressed as “kilocalories per kilogram” (“kcal/kg”) of product, and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and (11-1-06)T

iii. The calorie content is determined by one (1) of the following methods: (11-1-06)T

(1) By calculation using the following “Modified Atwater” formula: (11-1-06)T

(a) $ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$ (11-1-06)T

(b) Where: ME = Metabolizable Energy:

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>CP = % crude protein “as fed”</u> |
| <u>CF = % crude fat “as fed”</u> |
| <u>NFE = % nitrogen-free extract (carbohydrate) “as fed” and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product, and the NFE is calculated as the difference between one hundred (100) and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or</u> |

(11-1-06)T

(2) In accordance with a testing procedure established by AAFCO. (11-1-06)T

iv. An affidavit shall be provided upon request to the Department substantiating that the calorie content was determined by: (11-1-06)T

(1) Subsection 475.08.a.iii.(1) in which case the results of all the analyses used in the calculation shall accompany the affidavit; or (11-1-06)T

(2) Subsection 475.08.a.iii.(2) in which case the summary data used in the determination of calorie content shall accompany the affidavit. (11-1-06)T

v. The calorie content statement shall appear as one (1) of the following: (11-1-06)T

(1) The claim on the label or other labeling shall be followed parenthetically by the word “calculated” when the calorie content is determined in accordance with Subsection 475.08.a.iii.(1); or (11-1-06)T

(2) The value of calorie content stated on the label which is determined in accordance with Subsection 475.08.a.iii.(2) shall not exceed or understate the value determined in accordance with Subsection 475.08.a.iii.(1) by more than fifteen percent (15%). (11-1-06)T

b. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. (11-1-06)T

09. Descriptive Terms. (11-1-06)T

a. Calorie Terms: (11-1-06)T

- i. “Light”: (11-1-06)T
- (1) A dog food product which bears on its label the terms “light,” “lite,” “low calorie,” or words of similar designation shall: (11-1-06)T
- (a) Contain no more than three thousand one hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand five hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine-hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (11-1-06)T
- (b) Include on the label a calorie content statement: (11-1-06)T
- (i) In accordance with the format provided in Subsection 475.08; and (11-1-06)T
- (ii) Which states no more than three-thousand one-hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two-thousand five-hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (11-1-06)T
- (c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (11-1-06)T
- (2) A cat food product which bears on its label the terms “light,” “lite,” “low calorie,” or words of similar designation shall: (11-1-06)T
- (a) Contain no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (11-1-06)T
- (b) Include on the label a calorie content statement: (11-1-06)T
- (i) In accordance with the format provided in Subsection 475.08; and (11-1-06)T
- (ii) Which states no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (11-1-06)T
- (c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (11-1-06)T
- ii. “Less” or “Reduced Calories”: (11-1-06)T
- (1) A dog or cat food product which bears on its label a claim of “less calories,” “reduced calories,” or words of similar designation, shall include on the label: (11-1-06)T
- (a) The name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and (11-1-06)T
- (b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the type size used in the claim; and (11-1-06)T
- (c) A calorie content statement in accordance with the format provided in Subsection 475.08; and (11-1-06)T

(d) Feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison. (11-1-06)T

(2) A comparison between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (11-1-06)T

b. Fat Terms. (11-1-06)T

i. "Lean": (11-1-06)T

(1) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (11-1-06)T

(a) Contain no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture; (11-1-06)T

(b) Include on the product label in the Guaranteed Analysis: (11-1-06)T

(i) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Subsection 475.03.a.i.; and (11-1-06)T

(ii) A maximum crude fat guarantee which is no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture. (11-1-06)T

ii. A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (11-1-06)T

(a) Contain a maximum percentage of crude fat which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture; and (11-1-06)T

(b) Include on the product label in the Guaranteed Analysis: (11-1-06)T

(i) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Regulation PF4(a)(1); and (11-1-06)T

(ii) A maximum crude fat guarantee which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture. (11-1-06)T

iii. "Less" or "Reduced Fat": (11-1-06)T

(1) A dog or cat food product which bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label: (11-1-06)T

(a) The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and (11-1-06)T

(b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the

type size used in the claim; and (11-1-06)T

(c) A maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition to the mandatory Guaranteed Analysis information as specified in Subsection 475.03.a.i. (11-1-06)T

(2) A comparison on the label between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (11-1-06)T

10. Manufacturer or Distributor; Name and Address. (11-1-06)T

a. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label. (11-1-06)T

b. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed. (11-1-06)T

476. -- 499. (RESERVED).

500. COTTONSEED.

01. Certification. Prior to entry into the state of Idaho all shipments of cottonseed or cottonseed seed products destined for animal feed shall be certified as having been sampled and analyzed and no greater amount than twenty (20) ppb of aflatoxin shall be contained within the product or products, except that cottonseed meal intended for use as an animal feed or feed ingredient for beef cattle, swine and poultry, may be certified to contain more than twenty (20) ppb but less than three hundred (300) ppb of aflatoxin. (4-21-92)

02. Storage Location and Destination. Whole cottonseed, cottonseed meal or cottonseed seed products entering the state certified to contain no greater than twenty (20) ppb aflatoxin, or cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin shall be accompanied by the certification document aboard carrier, be identified with a storage location at destination, and the certification document shall be maintained on file at the shipment destination for no less than one (1) year. In the case of bulk rail car shipments, the certification document shall accompany the invoice or bill-of-lading and be identified with a storage location at destination. The certification document shall be maintained on file at the shipment destination for no less than one (1) year. (4-21-92)

03. Registration. Idaho firms wishing to import into the state and/or handle cottonseed meal containing more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin for distribution or sale shall register annually with the Department their intent to do so. Feedlots and other end user operations importing the cottonseed meal as defined above in this paragraph for their own use are exempted from registration requirement. The importing firm shall also register the cottonseed meal (if not already registered by another firm) with the Department and pay any applicable registration and tonnage fees (Title 25, Chapter 27, Sections ~~25-27-804~~ and 25-27-206, Idaho Code). As a condition of registration, firms importing and/or handling cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin, shall enter into a compliance agreement with the Department agreeing to: ~~(4-21-92)~~(11-1-06)T

a. Store and label cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin separately from cottonseed meal certified to contain less than twenty (20) ppb aflatoxin; (4-21-92)

b. Inform the purchaser in writing of the certified aflatoxin level in the meal purchased; and (4-21-92)

- c. Submit to periodic record and facility inspections, and product testing by the Department. (4-21-92)

04. Certification Performance. Required certification shall be performed by any state government or Federal government engaged in this type of certification. In the event that a state government or Federal government laboratory is not available, an independent or company laboratory may upon request be approved by the Department. Requests and approval shall be made in advance of the shipment entering the state. (4-21-92)

(BREAK IN CONTINUITY OF SECTIONS)

600. DETAINED COMMERCIAL FEEDS.

01. ~~Withdrawn From~~ Stop Sale, Use, or Removal. A commercial feed that is the subject of a “~~withdrawal from sale~~” “stop sale, use, or removal” order under Section 25-2725~~(a)~~11(1), Idaho Code, may be released from such an order by the following means: ~~(4-21-92)~~(11-1-06)T

- a. A commercial feed detained for nutritional violation(s) may be: (4-21-92)
- i. Remanufactured, using ingredients listed on the approved label, to meet label guarantees. The remixed feed shall be resampled and analyzed to ensure compliance prior to its return to sale. (4-21-92)
 - ii. Relabeled to reflect actual values, upon approval of a new label and registration, provided that these values are appropriate for their intended use. (4-21-92)
 - iii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - iv. Diverted to an alternate use such as inclusion into another feed, or feeding to the manufacturer’s own livestock, provided that it is appropriate for the diverted use and that it does not conflict with labeling or other State or Federal requirements for the diverted use. (4-21-92)
 - v. Destroyed. (4-21-92)
- b. A commercial feed detained for a drug or antibiotic violation may be: (4-21-92)
- i. Remanufactured to meet label guarantees. The remixed feed shall be resampled and analyzed prior to its return to sale. (4-21-92)
 - ii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - iii. Diverted to an alternate use, provided that it is appropriate for the diverted use labeling or other State or Federal requirements for the diverted use. (4-21-92)
 - iv. Destroyed. (4-21-92)
- c. A commercial feed deemed to be adulterated under Section 25-2727~~(a)~~07(1), Idaho Code, or which cannot safely be remanufactured, relabeled, or diverted to an alternate use may be: ~~(4-21-92)~~(11-1-06)T
- i. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - ii. Destroyed. (4-21-92)

02. Appropriate Compliance Procedure. The Department shall indicate which of the above listed compliance procedures are appropriate for the particular “withdrawal from sale” order. The seller shall indicate which procedure is to be followed and, upon approval from the Department, shall carry out the procedure within thirty (30)

days. Other procedures may be considered upon application by the state inspector or seller to the Chief, Bureau of Feeds and Plant Services, Idaho Department of Agriculture, Boise, Idaho. (4-21-92)

601. -- 9899. (RESERVED).

900. CIVIL PENALTIES.

In addition to any other penalty provided by law, the Department may assess civil penalties for violations of Title 25, Chapter 27, Idaho Code, or rules promulgated thereunder. Civil penalties will be issued in accordance with a penalty matrix established by a Department guidance document. Any violation that results in substantial harm to human health, animal health or the environment may be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for the initial violation or any subsequent violation. The Department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and registration revocation, suspension or denial. (11-1-06)T

901 -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.10 - RULES GOVERNING THE POTATO CYST NEMATODE (GLOBODERA PALLIDA)

DOCKET NO. 02-0610-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 28, 2006.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 22-2013, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

A new chapter, IDAPA 02.06.10 - Rules Governing the Potato Cyst Nematode (*Globodera pallida*), will be promulgated. The rule will specify its purpose, the regulated articles and regulated areas, the restrictions governing regulated articles and conditions governing the movement of regulated articles, inspection and disposition of regulated articles, and the penalties for violation of quarantine rules. This rule will parallel a Federal Order that will be effective concurrently with this rule. Rules must be promulgated to prevent the further introduction and dissemination of Potato Cyst Nematode into other states and areas of Idaho not included in the regulated area as outlined in the rule through the movement of infested plant material, plant products and soil.

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:

To protect the public health, safety or welfare and to confer a benefit.

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:

There are no fees or charges being imposed through this rulemaking.

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

This rulemaking does not negatively impact the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Michael E. Cooper or Thomas Dayley at (208) 332-8620.

DATED this 28th day of August, 2006.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
PO Box 790
Boise, ID 83701
Telephone: (208) 332-8503
Facsimile: (208) 334-2170

THE FOLLOWING IS THE TEXT OF TEMPORARY RULE DOCKET NO. 02-0610-0601

IDAPA 02
TITLE 06
CHAPTER 10

02.06.10 - RULES GOVERNING THE POTATO CYST NEMATODE (*GLOBODERA PALLIDA*)

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2013, Idaho Code. (8-28-06)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.10, “Rules Governing the Potato Cyst Nematode (*Globodera pallida*).” (8-28-06)T

02. Scope. The purpose and goal of this rule is to prevent the spread of Potato Cyst Nematode (*Globodera pallida*) (PCN) throughout Idaho and the United States. (8-28-06)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (8-28-06)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (8-28-06)T

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.10 incorporates by reference: (8-28-06)T

01. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006. (8-28-06)T

02. 7 CFR Part 305 – Phytosanitary Treatments, as revised 2006. (8-28-06)T

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

01. Street Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (8-28-06)T

02. 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. (8-28-06)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701-0790. (8-28-06)T

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (8-25-06)T

05. Fax Number. The fax number of the central office is (208) 334-2283. (8-25-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the department. (8-28-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS AND TERMS.

The Idaho State Department of Agriculture adopts the definitions set forth in Title 22, Chapter 20, Idaho Code. In addition as used in this chapter: (8-28-06)T

01. Certificate. A document, stamp, or imprint by which an inspector affirms that a specified regulated article meets applicable requirements of this subpart and may be moved intrastate or interstate to any destination. (8-28-06)T

02. Farm Equipment. Mechanized cultivating equipment, harvesting equipment, soil-moving equipment, farm tools, crates, boxes, burlap bags, and other farm product equipment or containers. (8-28-06)T

03. Infested Field. Any field in which the presence of PCN is confirmed. (8-28-06)T

04. Inspector. Any employee of ISDA, APHIS, the U.S. Department of Agriculture, or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under this rule. (8-28-06)T

05. Limited Permit. A document issued by an inspector to allow the intrastate or interstate movement of regulated articles that are ineligible for a certificate but that can be moved interstate for limited handling, utilization, or processing when, upon evaluation of the circumstances involved in each specific case the inspector determines that such movement will not result in the spread of PCN. (8-28-06)T

06. Nursery Stock. Plants with roots, plant crowns, roots for propagation, true bulbs, corms, rhizomes, and tubers of ornamental plants, and excluding soil-free aquatic plants. (8-28-06)T

011. ABBREVIATIONS.

01. APHIS. Animal and Plant Health Inspection Service. (8-28-06)T

02. ISDA. Idaho State Department of Agriculture. (8-28-06)T

03. PCN. Potato Cyst Nematode. (8-28-06)T

04. PPQ. Plant Protection and Quarantine. (8-28-06)T

05. USDA. United States Department of Agriculture. (8-28-06)T

012. -- 019. (RESERVED).

020. REGULATED AREAS.

In the State of Idaho, that part of the Township designated by "T 01 N; R 37 E" Boise Meridian, which lies east and south of the Snake River, and in Sections 10 through 36 and any other property found to be infested after the adoption of this rule. (8-28-06)T

021. REGULATED ARTICLES.

The following are regulated articles, and may not be moved intrastate or interstate from a regulated area except in accordance with this Rule: (8-28-06)T

01. Potatoes. (8-28-06)T

02. Nursery Stock. (8-28-06)T

03. Soil, Compost, Humus, Muck, Peat, and Decomposed Manure. (8-28-06)T

04. Grass Sod. (8-28-06)T

05. Small Grains and Soybeans. (8-28-06)T

- 06. Hay, Straw, Fodder, and Plant Litter.** (8-28-06)T
- 07. Ear Corn, Except Shucked.** (8-28-06)T
- 08. Used Farm Equipment.** (8-28-06)T
- 09. Other Products.** Any other products, articles, or means of conveyance of any character whatsoever, when it is determined by an inspector that they present a hazard of spread of PCN. (8-28-06)T

022. RESTRICTIONS.

- 01. Movement From A Non-Regulated Area.** Movement of regulated articles from a non-regulated area is subject to inspection by an inspector. Permits and certifications are not required. (8-28-06)T
- 02. Movement From a Regulated Area.** Movement of regulated articles from a regulated area is subject to the provision of Section 02.06.10.023 of this rule. (8-28-06)T
- 03. Other Restrictions.** No potatoes, tomatoes, eggplants or any other known host crops may be planted in the infested fields. Soil must not be moved from the infested fields. Any equipment leaving the infested fields must be sanitized and certified using USDA APHIS approved protocols. (8-28-06)T
- 04. Seed Potatoes.** Seed potatoes may not be grown in the regulated area. (8-28-06)T

023. CONDITIONS FOR INTRASTATE OR INTERSTATE MOVEMENT OF REGULATED ARTICLES.

Regulated articles may only be moved intrastate or interstate from a regulated area by a person under a compliance agreement if accompanied by a certificate or limited permit issued by an inspector. (8-28-06)T

- 01. Movements Under Certificate.** Certificates may be issued by an inspector for the intrastate or interstate movement of the following articles from regulated areas, provided they meet the conditions specified below: (8-28-06)T
- a. Potatoes:** (8-28-06)T
- i. The fields where the potatoes were grown were surveyed by an inspector prior to planting and found to be apparently free of PCN. Certification of freedom from PCN is valid for no more than three (3) years; (8-28-06)T
- ii. The potatoes were grown in a field in which no more than one potato crop was grown in the previous three (3) successive years; (8-28-06)T
- iii. The potatoes were processed and packed at facilities in accordance with guidelines issued by the USDA APHIS Administrator and posted on the APHIS website; and (8-28-06)T
- iv. Seed potatoes from regulated areas are not eligible for movement under certificate. (8-28-06)T
- b. The nursery stock must have been grown at a site that has been surveyed by an inspector and found to be apparently free of PCN.** (8-28-06)T
- c. Soil, compost, humus, muck, peat, decomposed manure, grass sod, small grains and soybeans, ear corn (except shucked), hay, straw, fodder, and plant litter must have been grown or located only at sites that have been surveyed by an inspector and found to be apparently free of PCN.** (8-28-06)T
- d. Before being removed from the field, farm equipment that has been used in any field that is infested with or potentially infested with PCN, or adjacent to such field located in the regulated area must be either:** (8-28-06)T

- i. Pressure washed to ensure that all soil has been removed; or (8-28-06)T
- ii. Steam treated in accordance with USDA APHIS PPQ Treatment Manual schedule T406-d and 7 CFR Part 305. (8-28-06)T

02. Movements under Limited Permit. Limited permits may be issued by an inspector to allow intrastate or interstate movement of regulated articles not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing when, upon evaluation of the circumstances involved in each specific case the inspector determines that such movement will not result in the spread of PCN. (8-28-06)T

024. INSPECTION, SAMPLING AND TESTING.

In order to accomplish the purposes of this rule, an inspector may enter upon and inspect any public or private premises, lands, or means of conveyance, or article of any person within this state, for the purpose of inspecting, surveying, sampling, testing, treating, controlling or destroying any soil, plant or plant material thought to or found to contain or be infested with PCN. (8-28-06)T

025. PENALTIES.

Any person violating any of the provisions of these rules will be subject to the penalty provisions of Title 22, Chapter 20, Idaho Code. (8-28-06)T

026. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2007.

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 22-2403, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amends the Noxious Weed list, creates sub-lists, designates articles capable of disseminating noxious weeds, provides for cleaning and disinfecting of articles capable of dissemination of noxious weed propagules, deletes reference to Special Management Zone, adds penalty section, and buffer zone allowance for counties.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Necessary to protect the public health, safety, or welfare and to implement the provisions of HB594 passed by the 2006 Legislature.

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

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

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted. Weed association groups (i.e. the Idaho Noxious Weed Advisory Committee and the Idaho Weed Control Association), members of industry, county weed superintendents, county commissioners, members of the seed industry and other interested parties participated in the rulemaking process, from draft to finalization.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Matthew K. Voile, Ag Section Manager, at (208) 332-8667.

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 25, 2006.

DATED this 23rd day of August, 2006.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P. O. Box 790, Boise, ID 83701
Telephone: (208) 332-8503
Facsimile: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0622-0601

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.06.22, "Noxious Weed Rules." (3-30-01)

02. **Scope.** These rules identify those noxious weeds which have been officially designated by the Director as Noxious Weeds in the state of Idaho, designates articles capable of disseminating noxious weeds, requires treatment of articles to prevent dissemination of noxious weeds and provides authority to designate ~~special management zones~~ cooperative weed management areas for management of noxious weeds. (~~3-30-01~~)(1-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

005. ~~ADDRESS, OFFICE, OFFICE HOURS, TELEPHONE AND FAX NUMBERS MAILING ADDRESS AND STREET ADDRESS.~~

01. **Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-~~0790~~. (~~3-30-01~~)(1-1-07)T

02. **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. (3-30-01)

03. **Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. (3-30-01)

~~04. Telephone Number. The telephone number of the central office is (208) 332-8540. (3-30-01)~~

~~05. Fax Number. The fax number of the central office is (208) 334-4062. (3-30-01)~~

006. **PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the Department and the State law library. (1-1-07)T

~~0067. -- 0909. (RESERVED).~~

010. **DEFINITIONS.**

The Department adopts those definitions as set forth in Section 22-2402, Idaho Code, and in addition, adopts the following: (1-1-07)T

01. **Early Detection and Rapid Response (EDRR).** Finding invasive plant species during the initial stages of colonization and then responding within the same season to initiate eradication of the invasive plant species. (1-1-07)T

02. **Implements of Husbandry.** Every vehicle, including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicator equipment, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. Implements of husbandry do not include semi trailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations. (1-1-07)T

011. ABBREVIATIONS.

- 01.** CWMA. Cooperative Weed Management Area. (1-1-07)T
02. EDRR. Early Detection/Rapid Response. (1-1-07)T
03. ISDA. Idaho State Department of Agriculture. (1-1-07)T

012. -- 099. (RESERVED).

100. NOXIOUS WEEDS - DESIGNATIONS.

The following weed lists - Statewide EDRR, Containment, and Control - are hereby officially designated and published as noxious. (1-1-07)T

~~**01. Designation of Noxious Weeds.** The following weeds are hereby officially designated and published as noxious: (7-1-93)~~

- ~~**a.** *Buffalobur (Solanum rostratum) Dun.* (7-1-93)~~
~~**b.** *Canada thistle (Cirsium arvense) (L.) Scop.* (7-1-93)~~
~~**c.** *Common crupina (Crupina vulgaris) Cass.* (7-1-93)~~
~~**d.** *Dalmatian toadflax (Linaria dalmatica) (L.) Mill.* (7-1-93)~~
~~**e.** *Diffuse knapweed (Centaurea diffusa) Lam.* (7-1-93)~~
~~**f.** *Dyers woad (Isatis tinctoria) L.* (7-1-93)~~
~~**g.** *Eurasian watermilfoil (Myriophyllum spicatum)* (3-30-01)~~
~~**h.** *Field bindweed (Convolvulus arvensis) L.* (7-1-93)~~
~~**i.** *Henbane (Hyoscyamus niger) L.* (7-1-93)~~
~~**j.** *Johnsongrass (Sorghum halepense) (L.) Pers.* (7-1-93)~~
~~**k.** *Jointed goatgrass (Aegilops cylindrica) Host.* (7-1-93)~~
~~**l.** *Leafy spurge (Euphorbia esula) L.* (7-1-93)~~
~~**m.** *Loosestrife (Lythrum salicaria) L.* (7-1-93)~~
~~**n.** *Matgrass (Nardus stricta).* (7-1-93)~~
~~**o.** *Meadow knapweed (Centaurea pratensis).* (7-1-93)~~
~~**p.** *Milium (Milium vernale).* (7-1-93)~~
~~**q.** *Orange hawkweed (Hieracium aurantiacum) L.* (7-1-93)~~
~~**r.** *Musk thistle (Carduus nutans) L.* (7-1-93)~~
~~**s.** *Perennial pepperweed (Lepidium latifolium) L.* (7-1-93)~~
~~**t.** *Perennial sowthistle (Sonchus arvensis) L.* (7-1-93)~~

| | | |
|----------------|-----------------------------------------------------------------------|---------------------|
| u- | Poison hemlock (<i>Conium maculatum</i>) L. | (7-1-93) |
| v- | Puncturevine (<i>Tribulus terrestris</i>) L. | (7-1-93) |
| w- | Rush skeletonweed (<i>Chondrilla juncea</i>) L. | (7-1-93) |
| x- | Russian knapweed (<i>Centaurea repens</i>) L. | (7-1-93) |
| y- | Scotch broom (<i>Cytisus scoparius</i>) (L.) Link. | (7-1-93) |
| z- | Scotch thistle (<i>Onopordum acanthium</i>) L. | (7-1-93) |
| aa- | Silverleaf nightshade (<i>Solanum elaeagnifolium</i>) Cav. | (7-1-93) |
| bb- | Skeletonleaf bursage (<i>Cambrosia tomentosa</i>) Nutt. | (7-1-93) |
| cc- | Spotted knapweed (<i>Centaurea maculosa</i>) Lam. | (7-1-93) |
| dd- | Syrian beancaper (<i>Zygophyllum fabago</i>) L. | (7-1-93) |
| ee- | Tansy ragwort (<i>Senecio jacobaea</i>) L. | (7-1-93) |
| ff- | Toothed spurge (<i>Euphorbia dentata</i>). | (7-1-93) |
| gg- | Whitetop (<i>Cardaria draba</i>) (L.) Desv. | (7-1-93) |
| hh- | Yellow hawkweed (<i>Hieracium pratense</i>) Tausch. | (7-1-93) |
| ii- | Yellow starthistle (<i>Centaurea solstitialis</i>) L. | (7-1-93) |
| jj- | Yellow toadflax (<i>Linaria vulgaris</i>) Mill. | (7-1-93) |

01. Statewide EDRR Noxious Weed List. Weeds listed in Section 100 and identified within Idaho shall be eradicated during the same growing season as identified. Plants occurring in Idaho shall be reported to the Department within ten days (10) following positive identification by the University of Idaho or other qualified authority as approved by the Director.

| Common Name | | Scientific Name | |
|--------------------|------------------------------|------------------------|----------------------------------------|
| 1. | <u>Brazilian Elodea</u> | 1. | <u><i>Egeria densa</i> P.</u> |
| 2. | <u>Giant Hogweed</u> | 2. | <u><i>Heracleum mantegazzianum</i></u> |
| 3. | <u>Hydrilla</u> | 3. | <u><i>Hydrilla verticillata</i></u> |
| 4. | <u>Policeman's Helmet</u> | 4. | <u><i>Impatiens glandulifera</i></u> |
| 5. | <u>Squarrose Knapweed</u> | 5. | <u><i>Centaurea squarrosa</i></u> |
| 6. | <u>Syrian Beancaper</u> | 6. | <u><i>Zygophyllum fabago</i></u> |
| 7. | <u>Tall Hawkweed</u> | 7. | <u><i>Hieracium piloselloides</i></u> |
| 8. | <u>Water Hyacinth</u> | 8. | <u><i>Eichhornia crassipes</i> M.</u> |
| 9. | <u>Yellow Devil Hawkweed</u> | 9. | <u><i>Hieracium glomeratum</i></u> |

(1-1-07)T

02. Statewide Control Noxious Weed List. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List must be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan must be available to the Department upon request. (1-1-07)T

| Common Name | | Scientific Name | |
|--------------------|-----------------------|------------------------|--------------------------------|
| 1. | Black Henbane | 1. | <i>Hyoscyamus niger</i> |
| 2. | Bohemian Knotweed | 2. | <i>Polygonum bohemicum</i> |
| 3. | Bufflobur | 3. | <i>Solanum rostratum</i> |
| 4. | Common Crupina | 4. | <i>Crupina vulgaris</i> |
| 5. | Dyer's Woad | 5. | <i>Isatis tinctoria</i> |
| 6. | Eurasian Watermilfoil | 6. | <i>Myriophyllum spicatum</i> |
| 7. | Giant Knotweed | 7. | <i>Polygonum sachalinesnse</i> |
| 8. | Japanese Knotweed | 8. | <i>Polygonum cuspidatum</i> |
| 9. | Johnsongrass | 9. | <i>Sorghum halpense</i> |
| 10. | Matgrass | 10. | <i>Nardus stricta</i> |
| 11. | Meadow Knapweed | 11. | <i>Centaurea pratensis</i> |
| 12. | Mediterranean Sage | 12. | <i>Salvia aethiopis</i> |
| 13. | Musk Thistle | 13. | <i>Carduus nutans</i> |
| 14. | Orange Hawkweed | 14. | <i>Hieracium aurantiacum</i> |
| 15. | Parrotfeather Milfoil | 15. | <i>Myriophyllum aquaticum</i> |
| 16. | Perennial Sowthistle | 16. | <i>Sonchus arvensis</i> |
| 17. | Russian Knapweed | 17. | <i>Acroptilon repens</i> |
| 18. | Scotch Broom | 18. | <i>Sytisus scoparius</i> |
| 19. | Silverleaf Nightshade | 19. | <i>Solanum elaeagnifolium</i> |
| 20. | Skeletonleaf Bursage | 20. | <i>Ambrosia tomentosa</i> |
| 21. | Small Bugloss | 21. | <i>Anchusa arvenis</i> |
| 22. | Toothed Spurge | 22. | <i>Euphorbia dentata</i> |
| 23. | Vipers Bugloss | 23. | <i>Echium vulgare</i> |
| 24. | Yellow Hawkweed | 24. | <i>Hieracium caespitosum</i> |

(1-1-07)T

03. Statewide Containment Noxious Weed List. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (1-1-07)T

| <u>Common Name</u> | | <u>Scientific Name</u> | |
|--------------------|-----------------------------|------------------------|---------------------------------------------------|
| 1. | <u>Canada Thistle</u> | 1. | <u><i>Cirsium arvense</i></u> |
| 2. | <u>Dalmation Toadflax</u> | 2. | <u><i>Linaria genistifolia ssp. dalmatica</i></u> |
| 3. | <u>Diffuse Knapweed</u> | 3. | <u><i>Centaurea diffusa</i></u> |
| 4. | <u>Field Bindweed</u> | 4. | <u><i>Convolvulus arvensis</i></u> |
| 5. | <u>Hoary Alyssum</u> | 5. | <u><i>Berteroa incana</i></u> |
| 6. | <u>Houndstongue</u> | 6. | <u><i>Cynoglossum officinale</i></u> |
| 7. | <u>Jointed Goatgrass</u> | 7. | <u><i>Aegilops cylindrica</i></u> |
| 8. | <u>Leafy Spurge</u> | 8. | <u><i>Euphorbia esula</i></u> |
| 9. | <u>Milium</u> | 9. | <u><i>Milium vernale</i></u> |
| 10. | <u>Oxeye Daisy</u> | 10. | <u><i>Chrysanthemum leucanthemum</i></u> |
| 11. | <u>Perennial Pepperweed</u> | 11. | <u><i>Lepidium latifolium</i></u> |
| 12. | <u>Plumeless Thistle</u> | 12. | <u><i>Carduus acanthoides</i></u> |
| 13. | <u>Poison Hemlock</u> | 13. | <u><i>Conium maculatum</i></u> |
| 14. | <u>Puncturevine</u> | 14. | <u><i>Tribulus terrestris</i></u> |
| 15. | <u>Purple Loosestrife</u> | 15. | <u><i>Lythrum salicaria</i></u> |
| 16. | <u>Rush Skeletonweed</u> | 16. | <u><i>Chondrilla juncea</i></u> |
| 17. | <u>Saltcedar</u> | 17. | <u><i>Tamarix</i></u> |
| 18. | <u>Scotch Thistle</u> | 18. | <u><i>Onopordum acanthium</i></u> |
| 19. | <u>Spotted Knapweed</u> | 19. | <u><i>Centaurea maculosa</i></u> |
| 20. | <u>Tansy Ragwort</u> | 20. | <u><i>Senecio jacobaea</i></u> |
| 21. | <u>White Bryony</u> | 21. | <u><i>Bryonia alba</i></u> |
| 22. | <u>Whitetop</u> | 22. | <u><i>Cardaria draba</i></u> |
| 23. | <u>Yellow Starthistle</u> | 23. | <u><i>Centaurea solstitialis</i></u> |
| 24. | <u>Yellow Toadflax</u> | 24. | <u><i>Linaria vulgaris</i></u> |

(1-1-07)T

024. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

a. Construction equipment, road building and maintenance equipment, and ~~farm machinery implements of husbandry.~~ (7-1-93)(1-1-07)T

b. ~~Trucks and~~ Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off- road vehicles and non-motorized vehicles such as bicycles and trailers. (7-1-93)(1-1-07)T

c. Grain and seed. (7-1-93)

d. Hay, straw and other material of similar nature. (7-1-93)

- e.** Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (7-1-93)(1-1-07)T
- f.** Feed and seed screenings. (7-1-93)
- g.** Fence posts, fencing and railroad ties. (7-1-93)
- h.** Sod. (7-1-93)
- i.** Manure, fertilizers and material of similar nature. (7-1-93)
- j.** Soil, sand, mulch, and gravel. (7-1-93)(1-1-07)T
- k.** Boats, personal watercraft, watercraft trailers, and items of a similar nature. (1-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

~~201. -- 299. (RESERVED).~~

~~300. **SPECIAL MANAGEMENT ZONES.**~~

~~Special management zone designation shall define the geographical location of the zone, identify noxious weeds which will receive modified control, and delineate the modified control. (1-15-91)~~

~~3201. -- 9599. (RESERVED).~~

600. PENALTIES FOR VIOLATIONS.

Any person violating any of the provisions of these rules will be subject to the penalty provisions of Title 22, Chapter 24, Idaho Code. (1-1-07)T

601. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

**02.06.31 - IDAHO DEPARTMENT OF AGRICULTURE NOXIOUS WEED
FREE FORAGE AND STRAW CERTIFICATION RULES**

DOCKET NO. 02-0631-0601 (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 22-2403 and 22-2404(J), 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 18, 2006.

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:

To shorten the rule title; update the title of the National standard that ISDA follows for field inspection procedures, delete sections, add definitions, add language to address forage cube certification, upgrade the distribution requirements and correct a reference to the Idaho Noxious Weed Law.

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

The inspection fees were slightly decreased for larger fields to be inspected.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dan Safford, Noxious Weed Specialist at (208) 332-8592.

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 25, 2006.

DATED this 14th day of August, 2006.

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0631-0601

001. TITLE AND SCOPE.

01. Title. The title of this chapter is the “~~Idaho Department of Agriculture~~-Noxious Weed Free Forage and Straw Certification Rules”. (3-10-00)(____)

02. Scope. This chapter has the following scope: these rules shall govern the inspection and certification of noxious weed free forage and straw to allow for the transportation and sale of forage and straw into and through states where regulations and restrictions are placed on such commodities. The official citation of this chapter is IDAPA 02.06.31.000 et seq. For example, the citation for this section is IDAPA 02.06.31.001. (3-10-00)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (____)

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

~~The amendments are in compliance with House Bill No. 244 of the 1999 Legislature and confer a benefit by deleting obsolete provisions relative to the certification of forage pellets, deleting the requirement for transit load tags, clarifying rules relative to the certification of baled and cubed forage or straw, clarifying existing language, and establishing a schedule of fees that may be charged by the certifying agent.~~ (3-10-00)

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 central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (____)

03. Street Address. The central office is located at 2270 Old Penitentiary Road, Boise, Idaho, 83712. (____)

(BREAK IN CONTINUITY OF SECTIONS)

00410. DEFINITIONS.

The definitions found in Section 22-2402, Idaho Code, apply to this chapter. In addition, as used in this chapter: (7-1-94)

01. Agent. Means any instrumentality or entity authorized by the director of the department, and acting on behalf of the department, to administer the provisions of this rule. Any designated agent shall act in an official capacity for the department and under the supervision of the director of the department. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. (3-10-00)

02. Approved Inspector. Means an individual who has been accredited by the department or by the department’s agent in the noxious weed free forage and straw certification program. (3-10-00)

03. Bale. Means a mechanically compressed package of forage or straw bound by string or wire, or other binding material. (7-1-94)(____)

~~**04. Bale Certification Inspection.** Means inspection of forage or straw which has been baled prior to inspection.~~ (3-10-00)

- 054. Bale Tag.** Means a tag or label which is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. (3-10-00)(____)
- 065. Certificate of Inspection.** Means a record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho state noxious weed free, ~~regional noxious weed free,~~ North American Noxious Weed Free, or that the field or commodity contains noxious weeds. (3-10-00)(____)
- 076. Certification.** Means the process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. (3-10-00)
- 07. Certification Markings.** Bale tags, blue and orange colored twine, and forage cubes/pellets container tags/labels. (____)
- 08. Department.** Means the Idaho State Department of Agriculture. (7-1-94)(____)
- 09. Field.** Means the land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. (3-10-00)
- 10. Field Certification Inspection.** Means an on-site inspection of forage or straw in the field, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting. (3-10-00)
- 11. Forage.** Means alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term "forage" includes forage cubes, and pellets. (3-10-00)(____)
- 12. Forage Cubes.** Means forage that is harvested from a field certified to North American Standards and is mechanically compacted into wafers or cubes. (3-10-00)(____)
- 13. Forage Cube/Pellet Tag.** Means a tag or label which is attached to a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified as North American Noxious Weed Free. (____)
- 154. Idaho State Noxious Weed Free.** Means forage and straw inspected for weeds designated by the director as noxious as defined in Section 22-2402(915), Idaho Code, and determined to be free of such weeds. (3-10-00)(____)
- 15. Idaho State Noxious Weed Free Standards.** Means forage and straw that meets the requirements Idaho State Noxious Weed Free. (____)
- 16. ~~Regional Noxious Weed Free~~ North American Noxious Weed Free.** Means forage and straw inspected for, and determined to be free of, weeds designated as noxious by ~~states participating in a regional noxious weed free forage and straw certification program, including but not limited to the following: Colorado, Idaho, Montana, Utah, and Wyoming~~ the director as defined in Section 22-2402(15) Idaho Code and noxious weeds listed on the North American Weed List. (3-10-00)(____)
- 17. North American Weed Free Forage Program.** The North American Weed Management Association standard for forage certification. (____)
- 18. North American Twine.** Blue and orange colored twine that is used to mark bales as certified to the North American Weed Free Forage Standard. (____)
- 19. North American Standards.** Means forage and straw that meets the requirements of the North American Weed Free Forage Program. (____)
- 1320. Noxious Weed Free.** Means no noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. (3-10-00)(____)

~~14~~21. **Official Sample.** Means a sample taken by an approved inspector. (3-10-00)

22. **Pellets.** Means forage that is harvested from a field certified to North American Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. ()

~~17~~23. **Straw.** Means the dried stalks or stems remaining after grain is harvested. (7-1-94)

~~18~~24. **Transit Certificate.** Means a document completed by an approved inspector to authorize the movement of noxious weed free certified forage bales or straw bales into or through areas which require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. If individual bales are tagged with an approved bale tag, a transit certificate is not required. (~~3-10-00~~)()

011. ABBREVIATIONS.

01. **ISDA.** The Idaho State Department of Agriculture. ()

02. **NAWMA.** North American Weed Management Association. ()

03. **NWFF&S.** Noxious Weed Free Forage and Straw. ()

012. -- 099. (RESERVED).

~~0~~100. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.

01. **Purpose.** The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection and certification of forage and straw as noxious weed free. The program will be managed by the department and may be implemented through an agent of the department. The program will allow for the transportation, possession, storage, and sale of forage and straw into and through states which place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. (~~3-10-00~~)()

02. **Certifying Authority.** The department or its agent is the certifying authority. The certifying authority shall appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. (3-10-00)

03. **Certification Training.** The department shall determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the department or its agent. ~~Approved inspectors must be re-accredited annually.~~ Attendance of annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a certificate of training for the calendar year. Annual training shall consist of: (~~3-10-00~~)()

a. Field inspection techniques and procedures; ()

b. ISDA and North American Noxious weed list plant identification; ()

c. ISDA and North American certification standards and guidelines; ()

d. Knowledge of weed management, including: ()

i. Burning; ()

ii. Mowing, cutting or roguing; ()

iii. Mechanical methods; and ()

- iv. Herbicides. ()
- e. Inspection forms. ()
- 04. Certification Program.** (3-10-00)
- a. The department or its agent shall: (3-10-00)
- i. Coordinate forage and straw inspections within the state; (3-10-00)
- ii. Select, train, and supervise persons who serve as approved inspectors; (3-10-00)
- iii. Issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels and bale tags to qualifying participants; ~~(3-10-00)~~()
- iv. Maintain a record of inspections performed and certificates and tags issued; (7-1-94)
- b. Under the direction of the department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. ~~(3-10-00)~~()
- 05. Application for Certification.** (7-1-94)
- a. Application for certification inspection shall be made on forms available from a the department or its agent and submitted to the department or its agent. (3-10-00)
- ~~b. Applications for bale certification inspections or for the official sampling and certification of cubed forage, in cases wherein forage or straw has not been field inspected prior to being baled or cubed, must be submitted to the department or its agent no later than ten (10) working days prior to the desired inspection date. (3-10-00)~~
- ~~eb.~~ An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. (3-10-00)
- 06. Field Inspection Procedures.** (7-1-94)
- a. Forage or straw shall be inspected within ten (10) days prior to harvest in the field of origin ~~prior to the beginning of harvest~~ for each field and cutting to be certified. ~~(7-1-94)~~()
- b. Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. (3-10-00)
- c. Field inspections must take place prior to any cultural operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. ~~(3-10-00)~~()
- ~~d. When performing field certification inspections, the approved inspector shall inspect the field in a manner which complies with procedures established by the department or its agent. There shall be a minimum of two (2) entry points per field. (3-10-00)~~()
- e. There shall be minimum of one (1) entry point per each ten (10) acres. ()
- f. Each point of entry shall be at least one-hundred fifty (150) feet into the field, and each additional one-hundred fifty (150) feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. ()

- g.** The entire field border shall be physically inspected. ()
- h.** The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. ()
- i.** Forage which contains any noxious weeds as identified in Section 22-2402(15) or noxious weeds listed on the North American Noxious Weed List, may be certified if the following requirements are met: ()
- i.** Field upon which the forage was produced was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant: ()
- ii.** Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for perennial grass species classified as weeds, prior to cutting or harvesting; and ()
- iii.** Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. ()
- j.** An inspection certificate shall document that the above requirements have been met. ()
- k.** Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. ()
- l.** Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. The storage area shall also be inspected and meet these standards. ()
- m.** An approved inspector may not inspect fields of which said inspector has ownership or financial interest. ()

~~**07. Bale Inspection Procedures.** When performing bale certification inspections, for forage or straw that was not field inspected, the approved inspector shall inspect the bales in a manner which complies with procedures established by the department or its agent. When performing bale certification inspections, the approved inspector shall:~~ (3-10-00)

~~**a.** Inspect not less than one (1) bale for each twenty five (25) bales for which certification is requested.~~ (3-10-00)

~~**b.** Randomly select bales for inspection.~~ (3-10-00)

~~**08. Cubed Forage Inspection Procedures.** Cubed forage that has not been field inspected may be certified under the following conditions:~~ (3-10-00)

~~**a.** The cubed forage shall be officially sampled.~~ (3-10-00)

~~**b.** A minimum official sample shall be taken of five (5) pounds up to one (1) ton, and five (5) pounds per ton thereafter.~~ (3-10-00)

~~**c.** The official sample shall be sent to the Idaho State Seed Laboratory or other Association of Official Seed Analysts laboratories, as approved by the department or its agent.~~ (3-10-00)

~~**d.** A germination test shall be performed on the official sample, and found to contain no viable noxious weed seeds.~~ (3-10-00)

097. Certification Standards. After completing an inspection, the approved inspector shall complete a certificate of inspection. (3-10-00)

a. If the field or commodity inspected is certified as ~~regional~~ North American Noxious Weed Free, the approved inspector shall issue a certificate of inspection for that harvest or cutting. If the field or commodity contains ~~regional~~ North American Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification shall be noted on the certificate of inspection. ~~(3-10-00)~~(____)

b. If the field or commodity inspected is certified as noxious weed free, the approved inspector may also issue, upon request, any of the following documents: ~~(3-10-00)~~(____)

i. Transit certificates. (7-1-94)

ii. Bale tags. (7-1-94)

iii. North American Twine only if the field or commodity is certified as North American Noxious Weed Free. (____)

c. Certificates of inspection, transit certificates and bale tags shall be on forms prescribed by the department or its agent. (3-10-00)

d. Certificates of inspection, transit certificates, North American Twine, North American Noxious Weed Free Forage cubes/pellets tags/labels, and bale tags will be available from the department or its agent to approved inspectors at cost. ~~(3-10-00)~~(____)

#08. Copy of Inspections and a List of Approved Inspectors. Upon request, the agent shall provide the department with a copy of certificates of inspections issued and a current list of approved inspectors. (3-10-00)

#09. Reciprocity. Forage or straw certified under a reciprocal agreement between the department and another state, and certified as ~~regional~~ North American Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and shall be considered to meet the requirements of the Idaho program. ~~(3-10-00)~~(____)

120. Exports. Certification under these rules does not qualify a commodity for export from the United States. Applications for certification for export should be made directly to the Division of Plant Industries within the department. (3-10-00)

131. Voluntary Posting. After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is certified as noxious weed free. (3-10-00)

142. Post-Certification and Distribution Requirements. After a producer's commodity has been inspected and certified, the producer, ~~distributor, or other responsible party~~ shall: ~~(3-10-00)~~(____)

a. Take reasonable and prudent steps to protect the certified commodity from contamination; (7-1-94)

b. Keep the certified commodity separated from all uncertified commodity; (3-10-00)

c. Attach bale tags or North American Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and ~~(3-10-00)~~(____)

d. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. (3-10-00)

153. Cancellation for Failure to Comply. Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the director, be suspended for a period of up to two (2) years from participating in the forage and straw

certification program.

(7-1-94)

164. Enforcement and Cancellation. Harvested lots of forage or straw from certified fields may be checked at any time by an certification approved inspector. Manufactured lots of forage cubes and pellets may be checked at any time by a certification inspector. Evidence that forage, ~~or~~ straw, ~~is~~ forage cubes/pellets are not from a ~~an~~ inspected certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. (3-10-00)()

15. Misuse of Transit Certificate and Certification Markings. Using a transit certificate or certification marking for forage from a field that has not been certified shall constitute a violation of these rules. ()

176. Certification Fees. A minimum of thirty dollars (\$30) per inspection shall be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. The agent may waive the general fee if the applicant has already been assessed a similar fee for other types of crop inspections. (3-10-00)()

~~0101. -- 99149.~~ (RESERVED).

150. NORTH AMERICAN NOXIOUS WEED LIST.

| <u>Common Name</u> | <u>Scientific Name</u> |
|---------------------------|-------------------------------|
| <u>Absinth wormwood</u> | <u>Artemisia absinthium</u> |
| <u>Bermudagrass</u> | <u>Cynodon dactylon</u> |
| <u>Buffalobur</u> | <u>Solanum rostratum</u> |
| <u>Canada thistle</u> | <u>Cirsium arvense</u> |
| <u>Common burdock</u> | <u>Arctium minus</u> |
| <u>Common crupina</u> | <u>Crupina vulgaris</u> |
| <u>Common tansy</u> | <u>Tanacetum vulgare</u> |
| <u>Dalmatian toadflax</u> | <u>Linaria dalmatica</u> |
| <u>Diffuse knapweed</u> | <u>Centaurea diffusa</u> |
| <u>Dyers woad</u> | <u>Isatis tinctoria</u> |
| <u>Field bindweed</u> | <u>Convolvulus arvensis</u> |
| <u>Hemp (marijuana)</u> | <u>Cannabis sativa</u> |
| <u>Henbane, Black</u> | <u>Hyoscyamus niger</u> |
| <u>Hoary cress</u> | <u>Cardaria spp.</u> |
| <u>Horsenettle</u> | <u>Solanum carolinense</u> |
| <u>Houndstongue</u> | <u>Cynoglossum officinale</u> |
| <u>Johnsongrass</u> | <u>Sorghum halepense</u> |
| <u>Jointed goatgrass</u> | <u>Aegilops cylindrica</u> |
| <u>Leafy spurge</u> | <u>Euphorbia esula</u> |
| <u>Matgrass</u> | <u>Nardus stricta</u> |

| <u>Common Name</u> | <u>Scientific Name</u> |
|------------------------------|------------------------------------------|
| <u>Meadow knapweed</u> | <u><i>Centaurea pratensis</i></u> |
| <u>Medusahead</u> | <u><i>Taeniatherum caput-medusae</i></u> |
| <u>Milium</u> | <u><i>Milium vernale</i></u> |
| <u>Musk thistle</u> | <u><i>Carduus nutans</i></u> |
| <u>Orange hawkweed</u> | <u><i>Hieracium aurantiacum</i></u> |
| <u>Oxeye daisy</u> | <u><i>Chrysanthemum leucanthemum</i></u> |
| <u>Perennial pepperweed</u> | <u><i>Lepidium latifolium</i></u> |
| <u>Perennial sorghum</u> | <u><i>Sorghum almum</i></u> |
| <u>Perennial sowthistle</u> | <u><i>Sonchus arvensis</i></u> |
| <u>Plumeless thistle</u> | <u><i>Carduus acanthoides</i></u> |
| <u>Poison hemlock</u> | <u><i>Conium maculatum</i></u> |
| <u>Puncturevine</u> | <u><i>Tribulus terrestris</i></u> |
| <u>Purple loosestrife</u> | <u><i>Lythrum salicaria</i></u> |
| <u>Quackgrass</u> | <u><i>Agropyron repens</i></u> |
| <u>Rush skeletonweed</u> | <u><i>Chondrilla juncea</i></u> |
| <u>Russian knapweed</u> | <u><i>Centaurea repens</i></u> |
| <u>Scentless chamomile</u> | <u><i>Anthemis arvensis</i></u> |
| <u>Scotch broom</u> | <u><i>Cytisus scoparius</i></u> |
| <u>Scotch thistle</u> | <u><i>Onopordum acanthium</i></u> |
| <u>Sericea Lespedeza</u> | <u><i>Lespedeza cuneata</i></u> |
| <u>Silverleaf nightshade</u> | <u><i>Solanum elaeagnifolium</i></u> |
| <u>Skeletonleaf bursage</u> | <u><i>Ambrosia tomentosa</i></u> |
| <u>Spotted knapweed</u> | <u><i>Centaurea maculosa</i></u> |
| <u>Squarrose knapweed</u> | <u><i>Centaurea virgata</i></u> |
| <u>St. Johnswort</u> | <u><i>Hypericum perforatum</i></u> |
| <u>Sulfur cinquefoil</u> | <u><i>Potentilla recta</i></u> |
| <u>Syrian beancaper</u> | <u><i>Zygophyllum fabago</i></u> |
| <u>Tansy ragwort</u> | <u><i>Senecio jacobaea</i></u> |
| <u>Toothed spurge</u> | <u><i>Euphorbia dentata</i></u> |
| <u>Wild oats</u> | <u><i>Avena fatua</i></u> |
| <u>Wild proso millet</u> | <u><i>Panicum miliaceum</i></u> |
| <u>Yellow hawkweed</u> | <u><i>Hieracium pratense</i></u> |
| <u>Yellow starthistle</u> | <u><i>Centaurea solstitialis</i></u> |
| <u>Yellow toadflax</u> | <u><i>Linaria vulgaris</i></u> |

()

151. -- 199. (RESERVED).

200. APPLICATION FORM REQUIREMENTS.

A person shall make an application for NWFF&S certification annually. There are no fees for application. The application shall be made with the ISDA agent in the county in which the person resides or in the county in which the person owns or leases land on which forage will be produced. The request for application shall be made in writing on application forms prescribed by ISDA. ()

201. -- 249. (RESERVED).

250. CERTIFICATION MARKING.

Each certified bale or container shall be marked by one (1) of the following: ()

01. North American Twine. Only one (1) strand is required per bale. ()

02. Forage Tag. The following information shall be shown on baled forage: ()

a. The words - "North American Weed Free Forage Certification Program" or "Idaho State Noxious Weed Free Forage & Straw Certification Program"; ()

b. Bale tag serial number; ()

c. County of origin identification; ()

d. ISDA emblem; ()

e. ISDA telephone number; and ()

f. A statement that the product is "Certified to the North American Standards" or "Certified to the Idaho State Noxious Weed Free Standards." ()

03. Forage Cube/Pellet Tag/Label. Certification tags/labels shall be attached to or a statement with the following information shall be printed on each container of noxious weed free product: ()

a. The words - "North American Weed Free Forage Certification Program"; ()

b. ISDA forage cube/pellet manufacturer identification; ()

c. ISDA emblem; ()

d. ISDA telephone number; and ()

e. A statement that the product is "Certified to the North American Standards." ()

251. -- 299. (RESERVED).

300. PROCEDURES FOR CERTIFICATION OF FORAGE CUBES/PELLETS.

01. Application. A person desiring to certify forage cubes/pellets as noxious weed free must make an annual application on the ISDA's forage cube/pellet application form. ()

02. Validity. The application shall be valid from the date of Department approval through December 31 of that calendar year. ()

03. Equipment. Equipment shall be cleaned of any noxious weed seeds prior to processing forage for

certification. ()

04. Purging. After cleaning equipment, a minimum of five hundred (500) pounds of certified forage must be purged through the entire system (from cubing/pelleting to bagging or bulk storage) prior to processing forage cubes/pellets. The five hundred (500) pounds of forage used to eliminate any noxious weed seeds shall not be certified. ()

05. Documentation. A manufacturer shall retain the following records for two (2) years: ()

a. All NWFF&S inspection certificates relating to the certified forage delivered to their manufacturing facility each calendar year. ()

b. Quantity of certified forage cubes/pellets processed each calendar year; and ()

c. Quantity of non-certified forage cubes/pellets processed each calendar year. ()

301. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-0601 (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 per Sections 22-1103 and 22-1106, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled as follows:

October 12, 2006 - 7:00 - 8:00 PM
Nampa Civic Center - Central/Banquet Room
311 Third Street South, Nampa, ID 83651

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 change will update the incorporation by reference section to reflect the changes to 7 CFR part 205 National Organic Program, effective January 2006. The registration and certification deadlines will be changed to earlier dates in the year. The registration fees will be increased, a late registration fee will be established, and the organic gross sales fee graduated scale will have a cap. Outside certifying agencies and their Idaho clients will be required to register with the Department. The fee increases will allow the program to self-sustain and the deadline changes will increase the efficiency of the program.

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

The registration fees will be increased, a late registration fee of one hundred dollars (\$100) and a late producer certification fee of two hundred fifty dollars (\$250) will be established, and the organic gross sales fee graduated scale will have a cap of five thousand dollars (\$5,000).

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

This rulemaking does not have any negative fiscal impact on the state general fund. Raising the initial registration fees and establishing late registration fees will add approximately \$15,000 annually to the organic dedicated fund. The costs to the organic producer/handler will increase depending on the size of the organic operation.

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted in coordination with the Idaho Organic Advisory Council.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Margaret Misner, Program Manager, (208) 332-8620.

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 25, 2006.

DATED this 23rd day of August, 2006.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0633-0601

004. INCORPORATION BY REFERENCE.

The ~~December 21, January~~ 2000~~06~~ Code of Federal Regulations (CFR) 7 CFR Part 205 Subchapter M-Organic Foods Production Act Provisions, except sections 205.620 through 205.642, is incorporated by reference. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 and are also available at the state law library. (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Agent. Any entity accredited by the Secretary of the United States Department of Agriculture as a certifying agent for the purpose of certifying a production or handling operation. ()

~~02.~~ **Department.** The Idaho State Department of Agriculture. (4-2-03)

~~023.~~ **Director.** The director of the department of agriculture or the director's designee. (4-2-03)

04. Certification. A document issued by the Department to a producer/handler who is in compliance with this rule who has more than five thousand dollars (\$5,000) annual gross organic sales. ()

05. Educational Activity. Seminar, conference, farm tour, class, or research. ()

~~036.~~ **Food Products.** Shall include all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products and aquaculture products. (4-2-03)

~~047.~~ **Handler.** Any person or organization who processes, packages, resells, transports or stores organic food products or nonorganic food products. (4-2-03)

~~058.~~ **Livestock.** Cattle, swine, sheep, goats, ratites, domestic cervidae, poultry and bison. (4-2-03)()

~~069.~~ **Organic Certification Seal.** The design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and all other conditions of the provisions of that chapter have been met. (4-2-03)

~~0710.~~ **Organic Food Product.** Any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides. (4-2-03)

~~0811.~~ **Organically Grown Food Products.** Food products which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown food products are produced under the standards and rules established in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and by other qualified agencies. (4-2-03)

~~0912.~~ **Person.** Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. (4-2-03)

- ~~103.~~ **Producer.** Any person or organization who: (4-2-03)
- a. Grows, raises or produces a food product; and (4-2-03)
 - b. Sells the food product as, or offers it for sale as, an organic food. (4-2-03)

14. Registration. A document issued by the Department to an organic producer/handler who has five thousand dollars (\$5,000) or less annual gross organic sales; or to an agent certifying organic producers/handlers in the state of Idaho; or to a producer/handler certified by an agent other than the Department. ()

- ~~115.~~ **Vendor.** Any person who sells organic food products to the consumer or another vendor. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

100. ~~RECERTIFICATION~~ EDUCATIONAL ACTIVITY REQUIREMENTS.

01. Eligibility. In addition to the requirements outlined in ~~7-CFR Part 205 Subchapter M Organic Foods Production Act Provisions "Continuance of Certification,"~~ this rule, all producers and handlers shall ~~attend one seminar~~ participate in at least one (1) approved educational activity annually to be eligible for ~~recertification~~ continued certification. (4-2-03)()

02. Request for Approval. A producer or handler ~~who will~~ attending an ~~seminar~~ educational activity, that is either in or out of state or the organizer of an ~~seminar~~ educational activity shall submit to the department a request for approval of an ~~seminar~~ educational activity not less than thirty (30) days prior to the scheduled ~~seminar~~ educational activity. Such a request shall be submitted on a form prescribed by the department. Under exceptional circumstances, as described in writing by the producer or handler requesting approval, the thirty (30) day requirement may be waived. (4-2-03)()

03. List of Attendees. The organizer of an approved ~~seminar~~ educational activity shall submit to the department a list of attendees ~~within thirty (30) days of the conclusion of the educational activity.~~ (4-2-03)()

04. Official Approval. Official approval shall be given only for those ~~seminars~~ educational activity that deal with: (4-2-03)()

- a. Organic production; (4-2-03)
- b. Integrated pest management; (4-2-03)
- c. Sustainable agriculture practices; (4-2-03)
- d. Organic handling; or (4-2-03)
- e. Processing practices. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

300. ~~REGISTRATION AND CERTIFICATION~~ REQUIREMENTS, DEADLINES AND FEES SCHEDULE.

01. Deadlines for Applications of Registration Requirements and Deadlines. ~~All organic food producers and organic handlers in Idaho, shall register with the Department by April 30th of each year. The~~

~~application and fees shall be forwarded to the Department on forms furnished by the Department. Applications received after April 30th will be considered late applications. All applicants applying for registration with the Department, shall submit the application to the Department on forms prescribed by the Department. (4-2-03)()~~

a. All organic producers/handlers in Idaho with five thousand dollars (\$5,000) or less annual gross organic sales shall register with the Department by March 31 of each year. ()

b. All organic producers/handlers in Idaho certified by agents other than the Department shall register with the Department within thirty (30) days of initial certification and by March 31st of each year thereafter. ()

c. All agents certifying producers/handlers in Idaho shall register with the Department within thirty (30) days of issuing their first Idaho producer/handler certificate. ()

d. Agents shall provide the Department, by January 2 of each year, a list of Idaho producers/handlers, addresses, and telephone numbers for each certificate issued during the prior calendar year. ()

~~**02. Deadlines for Applications of Certification.** All organic food producers and organic handlers in Idaho shall be certified with the Department or another certifying agent accredited under the National Organic Program, except those production or handling operations exempted in Section 205.101 of 7 Code of Federal Regulations (CFR). All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. All applicants applying for certification with the Department, shall submit the application and fees to the Department on forms furnished by the Department. Applications for certification received prior to April 30th will be given priority scheduling for on-site inspection services. Applications received after April 30th will be considered late applications. Late applicants may lose the opportunity to have their on-site inspection scheduled in conjunction with other applicants in the area, which could result in substantially higher inspection fees. Applications for producer certification received after July 1 will not be accepted. (4-2-03)~~

~~**03. Annual Registration Fees, Late Fees.** (4-2-03)()~~

~~**a.** Organic producer with annual gross income of more than five thousand dollars (\$5,000) — One hundred dollars (\$100). The annual registration fee is fifty dollars (\$50). (4-2-03)()~~

~~**b.** Organic producer with annual gross income of less than five thousand dollars (\$5,000) — Twenty-five dollars (\$25). Applications for registration postmarked after the deadline listed in Subsection 300.01.a. will be assessed a late fee of one hundred dollars (\$100). (4-2-03)()~~

~~**c.** Organic handler with annual gross income of more than five thousand dollars (\$5,000) — One hundred dollars (\$100). A person who produces and handles their own organic food products shall pay only one (1) annual registration fee. (4-2-03)()~~

~~**d.** Organic handler with annual gross income of less than five thousand dollars (\$5,000) — Twenty-five dollars (\$25). (4-2-03)~~

~~**e.** A person who produces and handles their own organic food products shall pay only one (1) registration fee of one hundred dollars (\$100) or twenty-five dollars (\$25) based on gross annual income. (4-2-03)~~

~~**04. Inspection Fees.** (4-2-03)~~

~~**a.** The hourly rate is twenty-five dollars (\$25) including travel time. (4-2-03)~~

~~**b.** Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (4-2-03)~~

~~**e.** There will be a minimum charge of twenty-five dollars (\$25) plus mileage for any inspection. (4-2-03)~~

~~d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (4-2-03)~~

~~e. The costs for chemical residue analysis of organically grown food products may be assessed against the producer or handler. (4-2-03)~~

~~f. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of thirty seven dollars and fifty cents (\$37.50) including travel time with a minimum charge of one (1) hour plus mileage. (4-2-03)~~

05. ~~Graduated Gross Sales Fee Schedule.~~ (4-2-03)

~~a. In addition to the fees prescribed above, all producers and handlers shall remit with their registration application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time registrant, a projected gross dollar amount for the upcoming calendar year, with a minimum fee of ten dollars (\$10). The graduated gross organic sales fee structure is as follows:~~

| | |
|----------------------------|----------------------------------------|
| 0-2,000 | \$10 |
| 2,001-5,000 | \$25 |
| 5,001-10,000 | \$50 |
| 10,001-15,000 | \$75 |
| 15,001-20,000 | \$100 |
| 20,001-25,000 | \$125 |
| 25,001-30,000 | \$150 |
| 30,001-35,000 | \$175 |
| 35,001-50,000 | \$250 |
| 50,001-75,000 | \$375 |
| 75,001-100,000 | \$500 |
| 100,001-150,000 | \$750 |
| 150,001-200,000 | \$1,000 |
| 200,001-280,000 | \$1,400 |
| 280,001-375,000 | \$1,875 |
| 375,001-500,000 | \$2,500 |
| 500,001 and up | 0.5% of gross organic sales |

~~(4-2-03)~~

~~b. Registration and application fees are non-refundable. (4-2-03)~~

301. CERTIFICATION REQUIREMENTS, DEADLINES AND FEES.

01. Certification Requirements and Deadlines. All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed by the Department by March 31st of each year. ()

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five

thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. ()

b. Producers/handlers with annual gross organic income of five thousand dollars (\$5,000) or less may select certification in place of registration. ()

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. ()

d. Applications for crop producer certification will not be accepted if postmarked after June 1st. ()

e. Livestock producer and handler applications will be accepted throughout the year. ()

02. Certification Fees, Late Fees. ()

a. Organic producers/handlers with annual gross organic income of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). ()

b. Organic producer/handler with annual gross organic income of more than fifteen thousand dollars (\$15,000) -Two hundred dollars (\$200). ()

c. A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. ()

d. Applications for producer/handler certification postmarked after March 31st will be assessed a late fee of two hundred-fifty dollars (\$250). ()

03. Certification Inspection Fees. ()

a. The hourly rate is thirty-five dollars (\$35) including travel time. ()

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. ()

c. There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. ()

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. ()

e. The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler. ()

f. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. ()

g. Upon approval by the Department, private inspectors may be utilized for operations that submitted their application after March 31 or under special circumstances. The applicant shall bear the total cost of the private inspection. ()

302. GRADUATED GROSS SALES FEE SCHEDULE.

01. Graduated Gross Sales Fee Table. In addition to the fees prescribed above, all producers and handlers certified by the Department and those registered by the Department with five thousand dollars (\$5,000) or less annual gross organic sales shall remit with their registration/certification application an amount based on their

annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross dollar amount for the upcoming calendar year, with a minimum fee of ten dollars (\$10). The graduated gross organic sales fee structure is as follows:

| | |
|--------------------------|----------------------------------------------------------|
| <u>0 - 2,000</u> | <u>\$ 10</u> |
| <u>2,001 - 5,000</u> | <u>\$ 25</u> |
| <u>5,001 - 10,000</u> | <u>\$ 50</u> |
| <u>10,001 - 15,000</u> | <u>\$ 75</u> |
| <u>15,001 - 20,000</u> | <u>\$ 100</u> |
| <u>20,001 - 25,000</u> | <u>\$ 125</u> |
| <u>25,001 - 30,000</u> | <u>\$ 150</u> |
| <u>30,001 - 35,000</u> | <u>\$ 175</u> |
| <u>35,001 - 50,000</u> | <u>\$ 250</u> |
| <u>50,001 - 75,000</u> | <u>\$ 375</u> |
| <u>75,001 - 100,000</u> | <u>\$ 500</u> |
| <u>100,001 - 150,000</u> | <u>\$ 750</u> |
| <u>150,001 - 200,000</u> | <u>\$1,000</u> |
| <u>200,001 - 280,000</u> | <u>\$1,400</u> |
| <u>280,001 - 375,000</u> | <u>\$1,875</u> |
| <u>375,001 - 500,000</u> | <u>\$2,500</u> |
| <u>500,001 and up</u> | <u>0.5% of gross organic sales up to \$5,000</u> |

()

02. Non-Refundable. Registration and certification application fees are non-refundable.

()

30-3. -- 399. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.00 - ELECTRICAL RULES
(SELECTED CHAPTERS OF THE ELECTRICAL BUREAU)

DOCKET NO. 07-0100-0601

**NOTICE OF INTENT TO PROMULGATE RULES - OMNIBUS NEGOTIATED
RULEMAKING AFFECTING CHAPTERS 07.01.01, 07.01.03, & 07.01.04**

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 54-1006, Idaho Code.

MEETING SCHEDULE: A public meeting(s) on the negotiated rulemaking will be held as follows:

| DATE | TIME | PLACE |
|----------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------|
| Thursday, November 9, 2006 | 8:30 a.m. | Nampa Civic Center 311 3 rd Street South Nampa, Idaho 83651 |
| Thursday, February 15, 2007 | 8:30 a.m. | Division of Building Safety 1090 E. Watertower Street Meridian, Idaho 83642 |
| Thursday, May 10, 2007 | 8:30 a.m. | *Idaho Falls, Idaho |
| Thursday, August 9, 2007 | 8:30 a.m. | *Post Falls, Idaho |
| *Specific location to be determined; contact Steve Keys for further information. | | |

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

- Attend the negotiated rulemaking and participate in the negotiation process;
- Provide oral or written recommendations, or both, at the negotiated rulemaking;
- Submit written recommendations and comments to the address below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The purpose of the intended rulemaking is to discuss how to integrate statutory requirements concerning master electricians into various existing rules such as inspection tag requirements for industrial accounts (IDAPA 07.01.01 - Rules Governing Electrical Inspection Tags); rules concerning electrical contractors (IDAPA 07.01.03 - Rules of Electrical Licensing and Registration – General); and modifying the qualifications for specialty electrical contractors to require a master electrician to countersign as a supervising master (IDAPA 07.01.04 – Rules Governing Electrical Specialty Licensing).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Steve Keys, Deputy Administrator, (208) 332-8986. Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 9, 2007.

DATED this 23rd day of August, 2006.

Steve Keys, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Meridian, Idaho 83642
Phone: 208-332-8986 / Fax: 208-855-2164

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 31, 2006.

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 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

A loophole has recently been discovered which seems to permit individuals working in the modular building industry to utilize this specialty electrical license in order to install electrical wiring, equipment, and apparatus. This rule is necessary in order to close that loophole, as this specialty was not intended to facilitate this type of work. This rule would make it clear that journeyman electricians and electrical apprentices, employed by an electrical contractor, must be utilized for the wiring of modular structures.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rulemaking is necessary to protect the public health, safety, or welfare.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes in the rules are required to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator, (208) 332-8986.

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 25, 2006.

DATED this 23rd day of August, 2006.

Steve Keys, Deputy Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-8986/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0601

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license:

(4-9-79)

01. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)

03. Manufacturing or Assembling Equipment. (4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty. (4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

c. Subsection 014.03 does not apply to a manufacturing or assembling equipment electrician installing electrical wiring, equipment, and apparatus in modular buildings as that term is defined in Section 39-4105, Idaho Code. Only journeyman electricians and electrical apprentices, employed by an electrical contractor, may perform such installations. (8-31-06)T

04. Limited Energy Electrical License. (9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. (7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or

repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. (7-1-98)

05. Irrigation Sprinkler Electrical. Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

06. Well Driller and Water Pump Installer Electrical Licenses. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the approved National Electrical Code. He shall be employed by a licensed well driller and water pump installer electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations: (1-14-87)

a. Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (4-6-05)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-, two-, or three-family residential installations. (4-11-06)

07. Refrigeration, Heating, and Air-Conditioning Electrical Installer. All such installation, maintenance, and repair performed by individuals under this section shall be done in accordance with applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three-phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 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 Section 39-4107, 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 rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 82 through 83.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

DATED this 23rd day of August 2006.

Jack Rayne
Building Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7151
Fax: 208-855-2164

DOCKET NO. 07-0301-0601 - ADOPTION OF PENDING RULE

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 06-8, August 2, 2006, pages 82 and 83.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSE BOARD
DOCKET NO. 07-0501-0602 (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 Section 54-1907, 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 18, 2006.

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 increases the fees for public works contractor licenses and is necessary to cover administration, discipline, enforcement, and educational outreach costs.

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

Under the authority of Section 54-1904, Idaho Code, which increased the fee cap rate, the proposed rules increase licensure fees as follows:

- Class A license shall be two hundred and fifty dollars (\$250)
- Class AA license shall be three hundred and fifty dollars (\$350)
- Class AAA license shall be four hundred and fifty dollars (\$450)
- Class B license shall be one hundred and fifty dollars (\$150)
- Class C license shall be one hundred dollars (\$100)
- Class D license shall be fifty dollars (\$50)

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

It is anticipated that this license fee increase will generate approximately \$250,000 annually in the Division of Building Safety's Public Works Contractors Licensing fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the necessity to increase fees to cover administration, discipline, enforcement, and educational outreach costs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator, (208) 332-8986.

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 25, 2006.

DATED this 23rd day of August, 2006.

Steve Keys, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Meridian, Idaho 83642
Phone: 208-332-8986/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF 07-0501-0602

201. FEES.

01. Fees. Fees for each class of public works contractor and construction manager license shall be ~~as~~ *designated and defined* in accordance with Sections 54-1904 and 54-4510, Idaho Code, ~~as follows:~~ *(3-20-04)* (____)

a. The fee for a Class A license shall be two hundred and fifty dollars (\$250). (____)

b. The fee for a Class AA license shall be three hundred and fifty dollars (\$350). (____)

c. The fee for a Class AAA license shall be four hundred and fifty dollars (\$450). (____)

d. The fee for a Class B license shall be one hundred and fifty dollars (\$150). (____)

e. The fee for a Class C license shall be one hundred dollars (\$100). (____)

f. The fee for a Class D license shall be fifty dollars (\$50). (____)

02. Payment of Fees. Fees shall be payable to "Division of Building Safety -- Public Works Contractors". (3-20-04)

03. Application Filed With Fees. Required fees shall accompany all applications. An application filed without the required fees shall be deemed incomplete and returned to the applicant. (3-20-04)

04. 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)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSING BOARD

DOCKET NO. 07-0501-0603

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 31, 2006.

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 54-1907, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The removal of the indemnification provisions by the Board has resulted in a great deal of feedback from small contractors and other agencies concerned that current requirements will limit participation by DBE's and other small businesses. Formalizing requirements for a "guarantor" and allowing the use of the "guarantor" will allow small contractors to qualify for licensure when the assets of the contracting entity on its own are insufficient to qualify. This rule is necessary to allow startup concerns to emerge, and to allow individuals to pledge personal assets to supplement those assets of a business entity that they control. The rule allows for a "guarantor" to pledge assets to facilitate the granting of a Public Works Contractor's License.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rulemaking is necessary to protect the public health, safety, or welfare.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes in the rules are required to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator, (208) 332-8986.

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 25, 2006.

DATED this 23rd day of August 2006.

Steve Keys, Deputy Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-8986/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0603

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

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: (3-20-04)

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; (3-20-04)

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; (3-20-04)

c. A general description of applicant's machinery and equipment; and ~~(3-20-04)~~(8-31-06)T

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 The applicant's financial statement may be supplemented with: (8-31-06)T

i. Bonding. As authorized by Section 54-1910(e), Idaho Code, a letter from applicant's bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, including supporting documentation; ~~(3-20-04)~~(8-31-06)T

ii. Guaranty. Documentation, satisfactory to the administrator, of the existence of a written guaranty agreement between the applicant and a third-party in which the third-party guarantor agrees to assume financial responsibility for payment of any obligations of the applicant for any particular project as may be determined by a court of competent jurisdiction. The guaranty agreement, along with financial statements meeting the requirements of Subsection 110.01.e. of this rule, shall be submitted with the license application. (8-31-06)T

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. (3-20-04)

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. (3-20-04)

g. Applicants requesting a licensing class higher than that for which the applicant is currently licensed shall provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. The monetary value of those jobs must fall within a range not less than thirty percent (30%) below that for which the applicant is currently licensed. (4-11-06)

02. Application for Change in Licensing Class. Requests for a licensing class higher than that for

which the applicant is currently licensed shall be accompanied by the information in Subsection 110.01, 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. (4-11-06)

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. (3-20-04)

04. Appraisals. The administrator may require 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. (3-20-04)

05. References. The administrator may require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications. (3-20-04)

~~**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. (3-20-04)~~

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.11 - OUT-OF-STATE INSTITUTIONS, IN-STATE NON-ACCREDITED INSTITUTIONS, AND CORRESPONDENCE OR PRIVATE COURSES

DOCKET NO. 08-0111-0601 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 10, 2006.

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 33-105, 33-2402, and 33-2403, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: This chapter is being repealed in its entirety and will be replaced by a new chapter adopted under Docket No. 08-0111-0602. The new chapter is published immediately following this docket.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To be in compliance with amendments to governing law or federal programs.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rules needed to be adopted in order to be in compliance with amendments to law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dana Kelly at 332-1574.

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 25, 2006

DATED this 10th day of August, 2006.

Karen L. Echeverria, Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

IDAPA 08.01.11 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-0602 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 10, 2006.

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 33-105, 33-2402, and 33-2403, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Title 33, Chapter 1 and 24, Idaho Code were amended to clarify that postsecondary institutions need to register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate. Criteria for evaluating these institutions and schools are set forth in this rule. Criteria are essential for determining the legitimacy of the institution for degree granting purposes and the legitimacy of proprietary schools.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To be in compliance with amendments to governing law or federal programs.

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:

Post secondary institutions will be charged \$100 per course with a \$5000 maximum. Proprietary schools will be charged \$100 per school. Fees will be used to investigate schools that have submitted an application to operate in Idaho under this portion of Idaho code. Institutions must be thoroughly investigated and evaluated to ensure they are legitimate degree granting institutions and not diploma mills.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule needed to be adopted in order to be in compliance with amendments to law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dana Kelly at 332-1574.

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 25, 2006.

DATED this 10th day of August, 2006.

Karen L. Echeverria, Deputy Director
State Board of Education - 650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0111-0602

IDAPA 08
TITLE 01
CHAPTER 11

08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

000. LEGAL AUTHORITY.

The following rules are made under authority of sections 33-105, 33-107, 33-2402, and 33-2403, Idaho Code to implement the provisions of Chapter 24, Title 33, Idaho Code. (8-10-06)T

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 08.01.11, "Registration of Postsecondary Educational Institutions and Proprietary Schools." (8-10-06)T

02. Scope. This rule sets forth the registration requirements for postsecondary educational institutions that are required to register with the Idaho State Board of Education ("Board") under Section 33-2402, Idaho Code, and for proprietary schools required to register with the Board under Section 33-2403, Idaho Code. In addition, this rule describes the standards and criteria for Board recognition of accreditation organizations, for registration purposes and for acceptance of academic credit. Finally, this rule describes the process the Board will use to evaluate courses or courses of study for acceptance for academic credit at Idaho's public postsecondary institutions. (8-10-06)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of this rule. (8-10-06)T

003. ADMINISTRATIVE APPEALS.

The administrative procedure act, chapter 52, title 67, Idaho Code, applies to any denial of registration of any postsecondary educational institution or proprietary school. Hearings and appeals shall be governed according to the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (8-10-06)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. (8-10-06)T

005. OFFICE INFORMATION.

01. Office Hours. The offices of the Board are open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. (8-10-06)T

02. Mailing Address. The mailing address of the Board is P.O. Box 83720, Boise, Idaho 83720-0037. (8-10-06)T

03. Street Address. The offices of the Board are located at 650 W. State Street, Boise, Idaho. (8-10-06)T

04. Telephone. The telephone number of the Board is (208) 334-2270. (8-10-06)T

05. Facsimile. The facsimile number of the Board is (208) 334-2632. (8-10-06)T

06. Electronic Address. The electronic address of the Board is board@osbe.idaho.gov. (8-10-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

this rule is are subject to the provisions of the public records act, title 9, chapter 3, Idaho Code. (8-10-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Accredited is defined in Section 33-2401(1), Idaho Code, and means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the Board. (8-10-06)T

02. Agent is defined in Section 33-2401(2), Idaho Code, and means any individual within the state of idaho who solicits students for or on behalf of a proprietary school. (8-10-06)T

03. Agent's permit is defined in section 33-2401(3), Idaho Code, and means a nontransferable written document issued to an agent by the Board or its designee. (8-10-06)T

04. Course is defined in Section 33-2401(5), Idaho Code, and means instruction imparted in a series of lessons or class meetings to meet an educational objective. (8-10-06)T

05. Course or Courses of study is defined in Section 33-2401(6), Idaho Code, and means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise. A course of study is sometimes also referred to in this rule as a program. (8-10-06)T

06. Degree is defined in Section 33-2401(7), Idaho Code, and means any academic, vocational, professional-technical or honorary title or designation, mark, appellation, series of letters, numbers, or words such as, but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional-technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition and an associate of arts or associate of science degree awarded by a community college or other public or private postsecondary educational institution or other entity which may be used for any purpose whatsoever. (8-10-06)T

07. Postsecondary Educational Institution, sometimes referred to in this rule simply as an institution, is defined in Section 33-2401(8), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within or which operates or purports to operate, from a location within the state of Idaho, and which provides courses or programs that lead to a degree, or which provides, offers or sells degrees. (8-10-06)T

08. Proprietary School, sometimes referred to in this rule simply as a school, is defined in Section 33-2401(9), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within or which purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. (8-10-06)T

011. -- 099. (RESERVED).

100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.

01. Registration of Postsecondary Educational Institutions. For purposes of registration of postsecondary educational institutions, the Board recognizes only regional accreditation organizations which are also recognized by the United States Department of Education, and which accredit entire colleges or universities, and which do not accredit only courses or courses of study (such as specialized accreditation organizations). Accordingly, for purposes of registration of postsecondary educational institutions under this rule, the Board recognizes the following accreditation organizations. (8-10-06)T

a. Middle States Association of Schools and Colleges (MSA), Commission on Higher Education - Accredits institutions of higher education in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands. (8-10-06)T

b. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (NEASC-CIHE) - Accredits institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. (8-10-06)T

c. North Central Association of Colleges and Schools, The Higher Learning Commission (NCA-HLC) - Accredits degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including schools of the Navaho Nation. (8-10-06)T

d. Northwest Commission on Colleges and Universities (NWCCU) - Accredits postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington. (8-10-06)T

e. Southern Association of Colleges and Schools (SACS), Commission on Colleges - Accredits degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. (8-10-06)T

f. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (WASC-ACSCU) Accredits senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands. (8-10-06)T

g. No other accreditation organization, other than the agencies listed in Subsections 100.01.a. through 100.01.f. of this rule, shall be recognized by the Board for purposes of registration of postsecondary educational institutions. (8-10-06)T

02. Acceptance of Academic Credit. (8-10-06)T

a. For purposes of acceptance of academic credit at Idaho public postsecondary educational institutions, the Board recognizes the regional accreditation associations described in Subsections 100.01.a. through 100.01.f. of this rule. (8-10-06)T

b. The Board will determine whether to accept specialized or other accreditation organizations, which accredit courses or courses of study, for purposes of acceptance of academic credit on a case-by-case basis. A request for recognition of other accreditation organizations for purposes of acceptance of academic credit should be made to the Board's chief higher education academic officer, who will review and evaluate the request with the input and advice of the Board's Committee on Academic Affairs and Programs (CAAP). The Board will make a final determination based on such evaluation and review. (8-10-06)T

101. -- 199. (RESERVED).

200. REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS.

01. Registration Requirement. (8-10-06)T

a. Unless exempted by statute or this rule, as provided herein, a postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. An institution shall not solicit students for on behalf of such institution, or advertise in this state, unless registered. (8-10-06)T

b. Initial registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next succeeding year. A registered postsecondary educational

institution must renew its certificate of registration annually, and renewal of registration is not automatic. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (8-10-06)T

02. Idaho Presence. An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (8-10-06)T

03. Institutions Exempt from Registration. (8-10-06)T

a. Idaho public postsecondary educational institutions. Section 33-2402(1), Idaho Code, provides that a public institution supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register. (8-10-06)T

b. Certain Idaho private, non-profit, postsecondary educational institutions. A private, non-profit, postsecondary educational institution that is already established and operational as of the effective date of this rule and located within the state of Idaho, and that is accredited by an accreditation association recognized by the Board, as set forth in Subsections 100.01.a. through 100.01.f. of this rule, shall not be required to register. A private, non-profit, institution is located within the state of Idaho only if it has been organized under the Idaho nonprofit corporation act, chapter 3, title 30, Idaho Code, and its principal place of business is located within the state of Idaho. To qualify for this exemption, a private, non-profit, postsecondary educational institution must be recognized by the Internal Revenue Service as a charitable or private foundation under applicable provisions of the Internal Revenue Code. (8-10-06)T

04. Institutions that Must Register. (8-10-06)T

a. Out-of-state public postsecondary educational institutions. A public institution that is supported primarily by taxation from another state, or from a local source not within the state of Idaho, must register as provided herein. (8-10-06)T

b. Out-of-state private, non-profit, postsecondary educational institutions. An out-of-state private, non-profit, postsecondary educational institution must register as provided herein. (8-10-06)T

c. Certain Idaho private, non-profit, postsecondary educational institutions. A private, non-profit, postsecondary educational institution that is located within the state of Idaho, but that is not exempt under Subsection 200.03.b. of this rule, must register as provided herein. (8-10-06)T

d. For-profit postsecondary educational institutions. A postsecondary educational institution that operates for profit, or which is an operating subsidiary of a publicly or privately held corporation that operates for profit, must register as provided herein. (8-10-06)T

05. Exception to Registration Requirement for Certain Postsecondary Institutions. (8-10-06)T

a. A postsecondary educational institution that demonstrates to the satisfaction of the Board that its primary mission and objectives are to offer courses or courses of study that do not lead to the awarding of degrees, may instead register as a proprietary school, in accordance with Section 400 of this rule. (8-10-06)T

b. A request to register as a proprietary school must be submitted in writing to the Board by the first business day of December preceding a registration year. A decision on such request will be issued by the Board within thirty (30) days after it is received. A request to register as a proprietary school must be made on an annual basis. (8-10-06)T

06. Application. A postsecondary educational institution that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form approved by the Board. The application must include a list of each course,

course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (8-10-06)T

07. Registration Fees. The Board shall assess an annual registration fee for initial registration, or renewal of registration, of a postsecondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one hundred dollars (\$100) for each course that the institution intends to conduct, provide, offer or sell during the registration year, as set forth in the registration application, not to exceed five thousand dollars (\$5,000). Registration fees are not refundable. (8-10-06)T

08. Deadline for Registration. An initial application for registration may be submitted to the Board at anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes a registration year. (8-10-06)T

09. Information Required. Such application must include the information requested on the application form, as well as the following information: (8-10-06)T

a. If an institution that is required to register under this rule is accredited by an accreditation organization recognized by the Board in Subsections 100.01.a. through 100.01.f. of this rule, such institution must submit documentation demonstrating that it has received accreditation status, and that it will maintain its accreditation from such agency during the entire registration year. An institution that is so accredited qualifies for a streamlined registration process under Subsection 200.09, and will not be required to submit information and/or documentation that documents compliance with all of the standards, I through VI, set forth in Subsections 200.10.a. through 200.10.f. of this rule, but may be required to provide the Board with additional information, on request, that documents compliance with some of the standards, or on any other matter related to registration. (8-10-06)T

b. All other institutions applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the standards, I through VI, set forth in Subsections 200.10.a. through 200.10.f. of this rule. (8-10-06)T

c. The Board may, in connection with a renewal of registration, request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.07 of this rule, shall remain applicable. (8-10-06)T

10. Approval Standards for Postsecondary Educational Institutions. An institution applying for registration must meet, or demonstrate that it will meet, all of the following standards: (8-10-06)T

a. Standard I - Legal Status and Administrative Structure. The institution must be in compliance with all local, state, and federal laws, administrative rules, and other regulations applicable to postsecondary educational institutions. (8-10-06)T

i. The institution must have a clearly stated mission and objectives that are consistent with educational offerings under consideration for approval by the Board. The institution must demonstrate how its stated mission and objectives are being accomplished. (8-10-06)T

ii. The governing board or the board of directors must be comprised of at least five (5) members who are selected to represent students, faculty, and other constituents of the institution. Board members must be given the responsibility for assuring that the mission and objectives are achieved, for establishing policies and overseeing their implementation, and for providing oversight for the entire institution, including the financial stability of the institution. Board members should generally not be affiliated with the institution from an employment, contractual, familial, or financial standpoint. Any affiliation or financial interest in the institution must be fully disclosed, and provisions must be made to address any conflicts of interest. (8-10-06)T

iii. There must be sufficient distinction between roles and responsibilities of the institution's governing board and the administration, faculty, and staff to ensure appropriate separation and independence. (8-10-06)T

iv. Each of the administrative officers must be appropriately qualified with educational credentials to ensure programs are of high quality and that the rights of students are protected. In particular, the chief academic officer of the institution must be academically prepared at least at the Master's degree level, and have a minimum of five (5) years of postsecondary educational experience at an accredited institution. (8-10-06)T

v. Administrators must be paid a fixed salary. Commissions may not be used for any portion of the compensation or to supplement an administrative salary. (8-10-06)T

vi. Policies must have been established to govern admissions, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; awarding of credit and grades that are comparable to other institutions; academic freedom; student and faculty rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures, etc.; to ensure the quality of educational offerings. (8-10-06)T

vii. The administration must establish procedures for evaluating the effectiveness of the entire institution and for assessing the quality of instruction through established and recognized methods of instructional assessment. Evaluation and assessment results must be used to improve institutional programs and services. Evaluative/assessment processes must involve internal constituents from the institution and appropriate external representatives. (8-10-06)T

b. Standard II - Educational Program and Curriculum. Instruction must be the primary focus of the institution, and all instructional activities must be clearly related to the achievement of the institution's mission and objectives. (8-10-06)T

i. The requirements for all instructional programs must be defined clearly, including applicable completion requirements for courses, credits, clinicals, etc. Faculty must be given the responsibility for developing the curriculum for all courses or courses of study or degrees, designing effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (8-10-06)T

ii. The institution must identify the number of credits required to earn a degree based on the following guidelines. Forty-five (45) clock-hours of student involvement are required for each semester credit, which includes a minimum of fifteen (15) student contact hours for each semester credit. Degrees are: (8-10-06)T

(1) ASSOCIATE OF APPLIED SCIENCE DEGREE: A credential awarded for completion of requirements entailing at least two (2) years, but less than four (4) years, of full-time professional-technical study with a minimum of sixty (60) semester credits (includes a minimum of sixteen (16) general education credits) and includes mastery of specific competencies drawn from requirements of business/industry; (8-10-06)T

(2) ASSOCIATE DEGREE: A credential awarded for completion of requirements entailing at least two (2) years, but normally less than four (4) years, of full-time academic work; (8-10-06)T

(3) BACCALAUREATE DEGREE: A credential awarded for completion of requirements entailing at least four (4) years of full-time academic work; (8-10-06)T

(4) MASTER'S DEGREE: A credential awarded for completion of requirements entailing at least one (1) year, but normally not more than two (2) years, of full-time academic work beyond the baccalaureate degree, including any required research; and (8-10-06)T

(5) DOCTORAL DEGREE: A credential awarded for completion of requirements entailing at least three (3) years of full-time academic work beyond the baccalaureate degree, including any required research. (8-10-06)T

iii. Written course descriptions must be developed for all courses and for all courses within a program or degree and include the following: course overview, learning objectives and outcomes, course content, assessment, and grading criteria. A written inventory must be maintained for all course descriptions, and course descriptions must be provided to the faculty. Faculty must be expected to follow course descriptions. A syllabus must be developed for

each course and distributed to students at the beginning of the course. (8-10-06)T

iv. For each course or courses of study leading to a degree, the institution shall assure that such courses will be offered with sufficient frequency to enable students to complete the courses of study and degree within the minimum time for completion. (8-10-06)T

c. Standard III - Student Support Services. The institution must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students' rights and responsibilities, grievance procedures, and must define what services are available to support students and instructional programs. (8-10-06)T

i. The institution must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course of study and the capacity of the institution to provide instructional and other support services the student needs to complete the program. (8-10-06)T

ii. There must be a clearly defined policy for the readmission of students dismissed from the institution for academic reasons. The readmission of students dismissed under this policy should be consistent with the recognized academic standards of admission to the institution. (8-10-06)T

iii. The institution must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the institution. The institution must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (8-10-06)T

iv. The institution must provide an effective program of academic advising for all students enrolled. The program must include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services. (8-10-06)T

v. The institution must provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at a minimum, the following information: the institution's mission; admissions policies; information describing the purpose, length, and objectives for the courses or courses of study or degrees offered by the institution; credit requirements for all courses or courses of study or degrees offered by the institution; procedures for awarding credit for work completed outside the collegiate setting; policies for acceptance of transfer credit; the schedule of tuition, fees, and all other charges and expenses necessary for completion of the courses or courses of study or degrees; cancellation and refund policies; a definition of the unit of credit as it applies at the institution; an explanation of satisfactory progress, including an explanation of the grading/assessment system; the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates; a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; a statement of legal control with the names of the trustees, directors, and officers of the institution or corporation or other entity; a complete listing of all scholarships offered, if any; a statement describing the nature and extent of available student services; complete and clearly stated information about the transferability of credit to other postsecondary educational institutions, including two-year and four-year colleges and universities; and any such other material facts concerning the institution and the courses or courses of study as are reasonably likely to affect the decision of the student to enroll at the institution. (8-10-06)T

vi. Accurate and secure records must be kept for all aspects of the student academic record including, at a minimum, admissions information, transcripts, and financial transactions. Standards established by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) must be used as a basis for establishing, maintaining, securing, and retaining student records. (8-10-06)T

vii. The institution must provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by courses of

study, and job placement rate by course of study. (8-10-06)T

d. Standard IV - Faculty Qualifications, Duties, and Compensation. Faculty qualifications must be clearly defined for each discipline and the assigned location for each faculty member must be identified. (8-10-06)T

i. Faculty must be qualified through academic preparation appropriate to their assigned classes and degree level; i.e., for bachelor degree programs, faculty must have a master's degree from an accredited institution; at the graduate level, a doctoral degree from an accredited institution. Relevant teaching experience or evidence to indicate they will be successful in the classroom must also be considered. Relevant work experience must also be considered. Transcripts for all faculty must be obtained, reviewed, and retained at the institution. Faculty must be recruited from a variety of institutions and backgrounds to enhance diversity and to avoid hiring a disproportionate number of individuals who are graduates of institutional programs. (8-10-06)T

ii. There shall be a sufficient number of full-time faculty members to maintain the continuity and stability of academic programs and policies. At least one full time faculty must be located in Idaho for each course or courses of study or degree, unless the institution can demonstrate specifically why this is not feasible, and identify what provisions have been, or will be, made to serve students effectively. (8-10-06)T

iii. A group of faculty must be organized and given responsibility in conjunction with the institution's chief academic officer for reviewing and approving all courses and degrees offered by the institution. This group must also be responsible for overseeing instructional assessment activities and setting standards for program review/evaluation. The group must be of sufficient size to effectively represent a variety of instructional disciplines and faculty perspectives. (8-10-06)T

iv. The ratio of faculty to students in each course must be sufficient to assure effective instruction. (8-10-06)T

v. Faculty must be paid a fixed salary. Commissions may not be used for any portion of the compensation, to supplement faculty salaries, or be connected to recruitment or retention of students. (8-10-06)T

vi. Procedures for evaluating faculty must be established, including provisions for promoting faculty and recognizing scholarly contributions to their academic discipline. (8-10-06)T

vii. A faculty development program must be established to encourage professional advancement and to enhance one's knowledge and instructional expertise. (8-10-06)T

e. Standard V - Resources, Financial Resources, and Facilities. The institution must have adequate financial resources to accomplish its educational mission and objective. (8-10-06)T

i. A financial officer in a managerial position must be designated for the institution and given responsibility for overseeing all of the financial aspects of the institution. (8-10-06)T

ii. Adequate financial resources must be provided to accomplish the institutional mission and to effectively support the instructional programs, including teaching facilities (i.e., classrooms, labs), instructional materials, supplies and equipment, faculty, staff, library, and the physical and instructional technology infrastructure. (8-10-06)T

iii. The institution must have sufficient reserves so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students, even if it were unable to admit any new students. (8-10-06)T

iv. Financial records and reports of the institution must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a public or non-profit institution must be kept in accordance with the most current guidelines from the National Association of College and University Business Officers. Financial records and reports of a for-profit institution must be kept in accordance with generally accepted accounting principles. A for-profit institution must organize its reports and records under categories or cost centers comparable to accounting funds identified in the most current guidelines from the National Association of

College and University Business Officers. (8-10-06)T

v. An annual independent audit of all fiscal accounts of the educational institution must be authorized by the governing board, and must be performed by a properly authorized certified public accountant. (8-10-06)T

f. Standard VI - Library and Instructional Resources. The institution must obtain and properly catalog library and other learning resources and make these resources readily available to its students and faculty. These holdings must be of sufficient quality and depth to support its mission and achievement of student and faculty learning objectives. (8-10-06)T

i. The institution must have adequate library facilities for the library holdings, space for study, and workspace for the librarian and library staff. (8-10-06)T

ii. Library services and resources must be available for student and faculty use with sufficient regularity, and at appropriate hours, to support the mission of the institution and its instructional offerings. (8-10-06)T

iii. If the institution relies on other institutions or entities to provide library resources, or this is done through electronic means, the institution must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (8-10-06)T

iv. The library must be administered by professionally trained staff supported by sufficient personnel. (8-10-06)T

11. Additional Information. If the Board is unable to determine the nature and activities of an institution on the basis of the information provided by the institution under this rule, then the Board may notify the institution of additional information that it will be required to provide in connection with the application for registration. (8-10-06)T

12. Verification of Information. The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant institution shall be responsible for any costs the Board incurs, including travel, associated with this review. (8-10-06)T

13. Criteria for Approval or Denial of Registration. To be approved for registration, the institution must demonstrate that it is in compliance with chapter 24, title 33, Idaho Code and this rule, including all of the standards described in Subsections 200.10.a. through 200.10.f. of this rule. An institution must remain in compliance for the registration year. (8-10-06)T

14. Public Information. All information submitted to the Board in connection with the application is public information, and is subject to disclosure as set forth in the public records act, title 9, chapter 3, Idaho Code. (8-10-06)T

15. Certificate of Registration. (8-10-06)T

a. A certificate of registration will be issued to a postsecondary educational institution that has paid its registration fee and has been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No institution that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is: "Registered with the Idaho State Board of Education." Registration is not an endorsement of the institution. (8-10-06)T

b. If an institution wishes to offer additional courses, courses of study, or degrees during the course of a registration year that were not included in its application to the Board prior to issuance of the certificate of registration, then the institution may submit a supplemental application to the Board, on a form approved by the Board, and pay any additional registration fees that are applicable. If approved, the Board will issue a revised

certificate of registration evidencing such approval. (8-10-06)T

16. Disapproval and Appeal. If a postsecondary educational institution's request for initial registration, or renewal of registration, is disapproved by the Board, then the institution may appeal such decision in accordance with chapter 52, title 67, Idaho Code. The request must be in writing and made to the office within thirty (30) days of the date the institution is notified of the disapproval. (8-10-06)T

17. Withdrawal of Approval. (8-10-06)T

a. The Board may refuse to renew, or may revoke or suspend approval of, an institution's registration by giving written notice and the reasons therefore to the institution. The institution may request a hearing relating to such decision under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (8-10-06)T

b. Withdrawal of approval may be for one or more of the following reasons: (8-10-06)T

i. Violation of chapter 24, title 33, Idaho Code or this rule; (8-10-06)T

ii. Providing false, misleading, deceptive, or incomplete information to the Board; (8-10-06)T

iii. Presenting to prospective or current students information about the institution which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (8-10-06)T

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Board has been received. (8-10-06)T

c. If any information contained in the application submitted by the institution becomes incorrect or incomplete, then the registered institution shall notify the Board of such change within thirty (30) days. An institution that ceases operation during the course of a registration year shall immediately inform the Board of this event. (8-10-06)T

201 -- 299. (RESERVED).

300. ACCEPTANCE OF ACADEMIC CREDIT AT IDAHO PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS.

01. Authority. Section 33-107(6)(b), Idaho Code, provides that the Board has the power to determine whether a course or courses of study for academic credit is transferable to, and will be accepted by, a public postsecondary educational institution in Idaho. (8-10-06)T

02. Criteria. Academic credit shall not be transferred into any Idaho public postsecondary institution from a postsecondary educational institution that is not accredited by an organization recognized by the Board, as set forth in Subsections 100.02.a. and 100.02.b. of this rule. A course or courses of study for academic credit shall be evaluated and reviewed to determine whether such course is comparable to a course offered by an Idaho public postsecondary educational institution. (8-10-06)T

03. Procedure. (8-10-06)T

a. A determination of whether a course or courses of study will be accepted for academic credit at an Idaho public higher education institution will be made after evaluation and review. An institution seeking such evaluation and review will be required to submit to the Board's chief higher education academic officer the documentation and/or information related to such course or courses of study, who will review and evaluate the request with the input and advice of CAAP. (8-10-06)T

b. Should a course or courses of study be evaluated as acceptable or comparable to a course or course of study offered by an Idaho public institution, then it will be accepted for academic credit by the Board and thus accepted by the public postsecondary institutions in Idaho. (8-10-06)T

c. A course or courses of study that are evaluated and determined not to be acceptable or comparable to a course or courses of study offered by an Idaho public institution shall not be accepted for academic credit at an Idaho public postsecondary institution. (8-10-06)T

301. -- 399. (RESERVED).

400. REGISTRATION OF PROPRIETARY SCHOOLS.

01. Delegation. Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board or its designee. The Board delegates authority to the Idaho State Department of Education to register proprietary schools, in accordance with this rule. (8-10-06)T

02. Registration Requirement. (8-10-06)T

a. Unless exempted by statute or this rule, as provided herein, a proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by the Department. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. (8-10-06)T

b. Initial registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (8-10-06)T

03. Exemptions from Registration. The following individuals or entities are specifically exempt from the registration requirements of this rule: (8-10-06)T

a. An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the Board. (8-10-06)T

b. An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (8-10-06)T

c. An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (8-10-06)T

d. An individual or entity which is otherwise regulated, licensed, or registered with another state agency pursuant to title 54, Idaho Code. (8-10-06)T

e. Aviation school or instructors approved by and under the supervision of the federal aviation administration. (8-10-06)T

f. An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (8-10-06)T

g. An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days. (8-10-06)T

h. A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (8-10-06)T

i. An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors. (8-10-06)T

04. Application. A proprietary school that is required to register under this rule must submit to the Department an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form approved by the Department. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year. (8-10-06)T

05. Registration Fees and Costs. A registration fee shall accompany each application for initial registration or renewal of registration. The fixed portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each school. The variable portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each course to be offered by the school during the registration year. Fees are not refundable. (8-10-06)T

06. Deadline for Registration. An initial application for registration may be submitted to the Department at anytime. A school should expect the Department's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Department on or before the first business day of May that precedes a registration year. (8-10-06)T

07. Information Required. (8-10-06)T

a. Such application must include the information requested on the application form. In addition, a school applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the standards, I through V, set forth in Subsections 400.08.a. through 400.08.e. of this rule. (8-10-06)T

b. The Department may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 400.05 of this rule, shall remain applicable. (8-10-06)T

08. Approval Standards for Registration of Proprietary Schools. The Board and its designee accepts the responsibility for setting and maintaining approval standards for proprietary schools that plan to offer courses or a set of related courses in or from Idaho in order to protect consumers and to ensure quality educational programs are provided throughout the state. A school must meet all of the standards prior to issuance of a certificate of registration and the school must provide required evidence to document compliance with the standards as identified in the application form. A certificate of registration may be denied if all of the standards are not met. (8-10-06)T

a. Standard I - Legal Status and Administrative Structure. The school must be in compliance with all local, state and federal laws, administrative rules, and other regulations applicable to proprietary schools. (8-10-06)T

i. The school must have a clearly stated educational purpose that is consistent with the courses or a set of related courses under consideration for approval by the Department. (8-10-06)T

ii. The ownership of the school, its agents, and all school officials must be identified by name and title. (8-10-06)T

iii. Each owner, agent, and school official must be appropriately qualified to ensure courses are of high quality and the rights of students are protected. (8-10-06)T

iv. Policies must have been established to govern admissions, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; student and instructor rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures to ensure the quality of educational offerings. (8-10-06)T

v. Procedures for assessing/evaluating the effectiveness of instruction must be established. Evaluation and assessment results must be used to improve courses or courses of study. (8-10-06)T

b. Standard II - Courses or Courses of Study. Instruction must be the primary focus of the school, and all instructional activities must be clearly related to the achievement of the stated instructional objectives. All courses or courses of study must prepare students to enter employment upon completion of the program or prepare them for self-employment. (8-10-06)T

i. The requirements for each course or courses of study must be defined clearly including applicable completion requirements or other requirements such as practicums, clinicals, etc. Instructors must be given the responsibility for developing the curriculum for all courses or courses of study, designing effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (8-10-06)T

ii. Written course descriptions must be developed for all courses or courses of study including: course overview, learning objectives and outcomes, course content, assessment, and grading criteria. A written inventory must be maintained for all course descriptions and course descriptions must be provided to instructors. Instructors must be expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (8-10-06)T

iii. The school must assure that a course or courses of study will be offered with sufficient frequency to enable students to complete courses or courses of study within the minimum time for completion. (8-10-06)T

iv. The school must clearly state the cost of each course or courses of study and identify the payment schedule. This information must be provided in written form to students, and the refund policy must also be given to students in writing. (8-10-06)T

v. All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, job opportunities, and other relevant information to assist students in making an informed decision to enroll. The school must provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the school's current completion and job placement rate. (8-10-06)T

c. Standard III - Student Support Services. The school must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students rights and responsibilities, grievance procedures, and define what services are available to support students. (8-10-06)T

i. The school must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course or courses of study and the capacity of the school to provide instructional and other support services the student needs to complete the program. (8-10-06)T

ii. There must be a clearly defined policy for the readmission of students dismissed from the school. The readmission of students dismissed under this policy must be consistent with the recognized standards of admission to the school. (8-10-06)T

iii. The school must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the school. The school must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (8-10-06)T

iv. The school must provide written information to prospective students prior to enrollment to include the following: information describing the purpose, length, and objectives of the courses or courses of study; completion requirements for the courses or courses of study; the schedule of tuition, fees, and all other charges and all expenses necessary for completion of the courses or courses of study; cancellation and refund policies; an explanation of satisfactory progress, including an explanation of the grading/assessment system; the calendar of study including registration dates, beginning and ending dates for all courses, and holidays; a complete list of instructors and their qualifications; a listing of available student services; and other information about the courses or courses of study that are likely to affect the decision of the student to enroll in the school. (8-10-06)T

v. Accurate and secure records must be kept for all aspects of the student record including, at minimum, admissions information, and the courses each student completed. (8-10-06)T

d. Standard IV - Faculty Qualifications and Compensation. (8-10-06)T

i. Instructor qualifications (training and experience) must be described and the assigned location for each instructor must be identified. (8-10-06)T

ii. There must be a sufficient number of full-time instructors to maintain the continuity and stability of courses. (8-10-06)T

iii. The ratio of instructors to students in each course must be sufficient to assure effective instruction. (8-10-06)T

iv. Instructors must be paid a fixed salary. Commissions may not be used for any portion of the compensation, to supplement faculty salaries, or be connected to recruitment or retention of students. (8-10-06)T

v. Procedures for evaluating instructors must be established. Provisions for student evaluation are recommended. (8-10-06)T

e. Standard V - Resources, Finance, Facilities, and Instructional Resources. (8-10-06)T

i. Adequate financial resources must be provided to accomplish instructional objectives and to effectively support the instructional program, including teaching facilities (i.e., classrooms, labs), instructional materials, supplies and equipment, instructors, staff, library, and the physical and instructional technology infrastructure. (8-10-06)T

ii. The school must have sufficient reserves so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students, even if it were unable to admit any new students. If the school is unable to fulfill its obligations to students, the school must make arrangements with another proprietary school to have students complete a comparable course or courses of study (a teach-out provision). (8-10-06)T

iii. Financial records and reports of the school must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a school shall be kept in accordance recognized financial accounting methods. (8-10-06)T

iv. The school must have adequate instructional resource materials available to students, either on site or through electronic means. These materials must be housed in a designated area and be available for students and instructors with sufficient regularity and at appropriate hours to support achievement of course objectives or to promote effective teaching. (8-10-06)T

v. If the school relies on other schools or entities to provide library resources or instructional resources, the school must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (8-10-06)T

09. Additional Information. If the Department is unable to determine the nature and activities of a school on the basis of the information provided by the school under this rule, then the Department may notify the school of additional information that it will be required to provide in connection with the application for registration. (8-10-06)T

10. Verification of Information. The Department may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant school shall be responsible for any costs the Department incurs including travel, associated with this review. (8-10-06)T

11. Criteria for Approval or Denial of Registration. To be approved for registration, the school must demonstrate that it is in compliance with chapter 24, title 33, Idaho Code and this rule, including all of the standards described in Subsections 400.08.a. through 400.08.e. of this rule. A school must remain in compliance for the registration year. (8-10-06)T

12. Public Information. All information submitted to the Department is public information, and is subject to disclosure as set forth in the public records act, title 9, chapter 3, Idaho Code. (8-10-06)T

13. Certificate of Registration. (8-10-06)T

a. A certificate of registration will be issued to a proprietary school that has paid its registration fee and been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No school that is registered with the Department shall advertise or represent in any manner that it is accredited by the Department. An institution may only represent that it is: "Registered with the Idaho State Department of Education." Registration is not an endorsement of the school. (8-10-06)T

b. If a school wishes to offer additional courses or courses of study during the course of a registration year that were not included in its application to the Department prior to issuance of the certificate of registration, then the school may submit a supplemental application to the Department, on a form approved by the Department, and pay any additional registration fees that are applicable. If approved, the Department will issue a revised certificate of registration evidencing such approval. (8-10-06)T

14. Disapproval and Appeal. If a proprietary school's request for initial registration or a renewal of registration is disapproved by the Department, then the school may appeal such decision in accordance with chapter 52, title 67, Idaho Code. The request must be in writing and made to the Department within thirty (30) days of the date the school is notified of the disapproval. (8-10-06)T

15. Withdrawal of Approval. (8-10-06)T

a. The Department may refuse to renew, or may revoke or suspend approval of a school's registration by giving written notice and the reasons therefore to the school. The school may request a hearing under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (8-10-06)T

b. Withdrawal of approval may be for one or more of the following reasons: (8-10-06)T

i. Violation of chapter 24, title 33, Idaho Code or this rule. (8-10-06)T

ii. Providing false, misleading, deceptive, or incomplete information to the Department. (8-10-06)T

iii. Presenting to prospective or current students information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (8-10-06)T

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Department has been received. (8-10-06)T

c. If any information contained in the application submitted by the school becomes incorrect or incomplete, then the registered school shall notify the Department of such change within thirty (30) days. A school that ceases operation during the course of a registration year shall immediately notify the Department of this event. (8-10-06)T

16. Agent's Permit. Each proprietary school shall ensure that its agents have a valid permit, and that all of its agents are in compliance with Section 33-2404, Idaho Code. (8-10-06)T

17. Annual Agent's Permit Fee. The annual fee for the agent's permit shall be fifty dollars (\$50.00). The agent's permit must be renewed annually upon reapplication and proper qualifications, as required by Section 33-2404, Idaho Code. (8-10-06)T

18. Surety Bond. Each proprietary school shall obtain a surety bond and comply with the provisions in Section 33-2406, Idaho Code. (8-10-06)T

19. Student Tuition Recovery Account. Each proprietary school shall comply with the provisions of Section 33-2407, Idaho Code, relating to a student tuition recovery account. (8-10-06)T

401. -- 999. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 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 Section 33-105, Idaho Code and Public Law 107-110 ("No Child Left Behind") Section 1111.b.3.C.ix.III.

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 No Child Left Behind Act requires that states give some type of recognition to schools in addition to making Adequate Yearly Progress (AYP). In 2003, the State Board of Education approved two rewards. Subsequently, greater clarification was added to the rule to more clearly differentiate the two awards. This proposal amends the rule to give responsibility of calculation rewards to the State Department of Education (SDE). The SDE currently makes all calculations for AYP and can use the same data to calculate the rewards. The SDE follows the guidelines in the State Accountability Plan to calculate AYP and would continue to the guidelines set up by the State Board of Education to calculate the rewards.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the January 4, 2006 Idaho Administrative Bulletin, Vol. 06-01, pages 51 and 52.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Karen Echeverria at (208) 332-1567.

DATED this 10th day of August, 2006.

Karen L. Echeverria
Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037
Boise, ID 83720-0037
(208) 332-1567 phone
(208) 334-2632 FAX

DOCKET NO. 08-0203-0601 - ADOPTION OF PENDING RULE

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 06-1, January 4, 2006, pages 51 and 52.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.

IDAPA 08 - RULES OF THE STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0604

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) 33-105 and 33-1612, 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 18, 2006.

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:

Alternative secondary programs provide special instructional courses and offer special services to eligible at-risk youth to enable them to earn a high school diploma. Specific student eligibility qualifications are set forth in State Board Rule, IDAPA 08.02.03.110.01. Students who have been in an Limited English Proficiency (LEP) program for less than 3 years are at a greater risk of failing classes, not passing the ISAT, and possibly dropping out of school. These students may have increased difficulty in comprehending the curriculum material due to their English language skills. By including the subgroup of LEP students in the definition of "at-risk youth", these students will have access to additional acceleration services that will assist them not only in their English language acquisition but also will increase their ability to participate fully in the classroom.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this was written at the request of school district administrators and with the approval of the Limited English Proficiency Program Manager from the State Board of Education and staff from the Idaho Department of Education.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Jana Jones (208) 332-6810 or Wendy St. Mitchell (208) 332-1586.

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 25, 2006.

DATED this 15th day of August, 2006.

Karen Echeverria
Deputy Director
Idaho State Board of Education
650 W. State Street
PO Box 83720
Boise, ID 83720-0027
Phone: (208) 332-1567
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0604

110. ALTERNATIVE SECONDARY PROGRAMS (SECTION 33-1002; 33-1002C; 33-1002F, IDAHO CODE).

Alternative secondary programs are those that provide special instructional courses and offer special services to eligible at-risk youth to enable them to earn a high school diploma. Some designated differences must be established between the alternative school programs and the regular secondary school programs. Alternative secondary school programs will include course offerings, teacher/pupil ratios and evidence of teaching strategies that are clearly designed to serve at-risk youth as defined in this section. Alternative high school programs conducted during the regular school year will be located on a separate site from the regular high school facility or be scheduled at a time different from the regular school hours. (4-1-97)

01. Student Qualifications. An at-risk youth is any secondary student grade seven through twelve (7-12) who meets any three (3) of the following criteria, Subsections 110.01.a. through 110.01.e~~f.~~, or any one (1) of criteria in Subsections 110.01.f~~g.~~ through 110.01.h~~m.~~ (~~4-5-00~~)()

- a. Has repeated at least one (1) grade. (4-1-97)
- b. Has absenteeism that is greater than ten percent (10%) during the preceding semester. (4-1-97)
- c. Has an overall grade point average that is less than 1.5 (4.0 scale) prior to enrolling in an alternative secondary program. (4-1-97)
- d. Has failed one (1) or more academic subjects. (4-1-97)
- e. Is two (2) or more semester credits per year behind the rate required to graduate. (4-1-97)
- f. Is a limited English proficient student who has not been in a program more than three (3) years. ()
- f~~g.~~ Has substance abuse behavior. (4-1-97)
- g~~h.~~ Is pregnant or a parent. (4-1-97)
- h~~i.~~ Is an emancipated youth. (4-1-97)
- i~~j.~~ Is a previous dropout. (4-1-97)
- j~~k.~~ Has serious personal, emotional, or medical problems. (4-1-97)
- k~~l.~~ Is a court or agency referral. (4-1-97)
- l~~m.~~ Upon recommendation of the school district as determined by locally developed criteria for disruptive student behavior. (4-1-97)

02. Instruction. Special instruction courses for at-risk youth enrolled in an alternative secondary program will include: (4-1-97)

- a. Academic skills that include language arts and communication, mathematics, science, and social studies that meet or exceed minimum state standards. (4-1-97)
- b. A personal and career counseling component. (4-1-97)
- c. A physical fitness/personal health component. (4-1-97)

- d.** A state division approved vocational-technical component. (4-1-97)
- e.** A child care component with parenting skills emphasized. (4-1-97)
- 03. Graduation Credit.** Graduation credit may be earned in the following areas: academic subjects, electives, and approved work-based learning experiences. Nonacademic courses, i.e., classroom and office aides do not qualify for credit unless they are approved work-based learning experiences. (4-5-00)
- 04. Special Services.** Special services, where appropriate for at-risk youth enrolled in alternative secondary programs, include the following where appropriate: (4-1-97)

 - a.** A day care center when enrollees are also parents. This center should be staffed by a qualified child care provider. (4-1-97)
 - b.** Direct social services that may include officers of the court, social workers, counselors/psychologists. (4-1-97)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0605

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 33-105, 33-118, 33-1612, Idaho Code.

PUBLIC HEARING SCHEDULE: The SBOE will conduct five (5) statewide public hearings. The public hearings will take place from 11:00 am - 8:00 pm on October 17th, at the following locations:

**Blackfoot School District
Board Room
270 E Bridge St
Blackfoot, Idaho**

**Boise State University
Student Union Building, Hatch A
1910 University Drive
Boise, Idaho**

**North Idaho College
Driftwood Bldg, Bay Rm
1000 W Garden Ave
Coeur d' Alene, Idaho**

**University of Idaho
JA Albertson Building
Michael Boardroom (Room 311)
645 W Pullman Hwy
Moscow, Idaho**

**College of Southern Idaho
Student Union Building, Rm 248
315 Falls Ave
Twin Falls, Idaho**

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 State Board of Education's research indicates that increased rigor in high school helps students to be better prepared for the workforce and post secondary education including professional technical education. These rule amendments will reflect appropriate expectations for all high school students to help them succeed in whatever path they choose after high school.

The proposed rule amendments will increase the total number of credits required to graduate from high school from 42 to 46 starting with the graduating class of 2013. The amendments will increase the math requirements from 4 credits to 6 and the science requirements from 4 credits to 6 starting with students who enter the 9th grade in the fall of 2009. The amendments also require students to take the ACT, SAT, or COMPASS test in the 11th grade, and to complete a Senior Project. Finally, the rules require all school districts to provide at least one Advanced Opportunity for all students.

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

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

The fiscal impact for FY 08 will be approximately \$2 million, which include \$1 million for teacher training and professional development and \$1 million for increasing Advanced Learning Opportunities. The State Board is currently developing additional information to determine the annual fiscal impact when the rule becomes effective for the graduating class of 2013.

The long-term positive fiscal impact to the state will be a decreased need for remedial math and science courses in high schools and colleges. Studies have shown that there is a direct correlation with the number of remedial courses a student takes and the likelihood of a student completing college. There should also be increases in the number of students entering college with credits from AP and dual credit courses decreasing the costs for students to complete

degrees and decreasing the cost of postsecondary institutions.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The State Board of Education held a series of 13 focus forum around the state during the month of July in which more than 450 individuals participated including stakeholders from education, business, parents, community leaders and legislators. The State Board of Education took into account the comments they received during the focus forums and drafted the rule based on those comments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Christine Ivie at 332-1577.

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 25, 2006.

DATED this 10th day of August, 2006.

Karen L. Echeverria, Deputy Director
State Board of Education - 650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0605

105. GRADUATION FROM HIGH SCHOOL.

A student must meet all of the following requirements before the student will be eligible to graduate from an Idaho high school: (4-11-06)

01. Credit Requirements. ()

a. (Effective for all students that graduate prior to January 1, 2013.) Each student shall 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. ~~(6-15-06)~~()

b. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) Each student shall complete the requirements found in Section 107 and other subjects to include forty-six (46) semester credits, one (1) semester equaling one-half (1/2) year. ()

02. Achievement Standards. Each student shall meet locally established subject area achievement standards (using state standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (4-11-06)

03. Proficiency (Effective January 1, 2006). Each student shall achieve a proficient or advanced score on the High School Idaho Standards Achievement Test (ISAT) in order to graduate. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and, at the discretion of the school district or LEA, 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. (4-11-06)

a. Before appealing to the school district or LEA for an alternate measure, the student must be: (4-11-06)

- i. Enrolled in a special education program and have an Individual Education Plan (IEP), or (3-20-04)
- ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less, or (3-20-04)
- iii. Enrolled in the fall semester of the senior year. (3-20-04)
- b. The measure must be aligned at a minimum to tenth grade state content standards; (3-20-04)
- c. The measure must be aligned to the state content standards for the subject matter in question; (3-20-04)
- d. The measure must be valid and reliable; and (3-20-04)
- e. Ninety percent (90%) of the criteria of the measure, or combination of measures, must be based on academic proficiency and performance. (3-20-04)

04. Foreign Exchange Students. Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

05. Special Education Students. A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

106. ~~(RESERVED)~~ ADVANCED OPPORTUNITIES (EFFECTIVE JULY 1, 2008).
All high schools in Idaho shall be required to provide Advanced Opportunities, as defined in Subsection 007.01, or provide opportunities for students to take courses at the postsecondary campus. ()

107. HIGH SCHOOL GRADUATION REQUIREMENTS.

01. Requirements. (Effective for all students that graduate prior to January 31, 2013.) 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 ISAT (effective January 1, 2006). 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 professional-technical 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. ~~(6-15-06)F~~()

02. Requirements. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) The State minimum graduation requirement for all Idaho public high schools requires that a student take a minimum of forty-six (46) semester credits and achieve a proficient or advanced score on the ISAT. ()

a. Twenty-nine (29) semester credits are required as listed in Subsections 107.03 through 107.08; and ()

b. A minimum of seventeen (17) elective credits. ()

c. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. ()

d. Local school districts or LEAs may establish graduation requirements beyond the state minimum. The local school district or LEA has the responsibility to provide educational opportunities that meet the needs of students in both academic and professional technical 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. ()

023. 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)

034. Mathematics ~~and Science.~~ ()

a. Mathematics. (Effective for all students that graduate prior to January 31, 2013.) 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 based. 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. (6-15-06)†()

b. Mathematics. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) Six (6) credits required. Secondary mathematics shall include instruction in the following areas: ()

i. Two (2) semesters of Algebra I or courses that meet Algebra I standards as approved by the State Department of Education; ()

ii. Two (2) semesters of Geometry or courses that meet Geometry standards as approved by the State Department of Education; and ()

iii. Two (2) semesters of mathematics of the student's choice. ()

iv. Two (2) semesters of the required six (6) credits of mathematics must be taken in grade twelve (12). ()

c. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement. However the student must complete six (6) credits of high school math in addition to the courses completed in middle school. ()

05. Science. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) Six (6) credits required. ()

a. Secondary sciences shall include instruction in the following areas: ()

i. Biology; ()

ii. Physical science or chemistry; and ()

iii. Earth, space, environment, or approved applied science. ()

b. Four (4) credits of courses outlined in Subsection 107.05.a. must be laboratory based. ()

c. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement. However, the student must complete six (6) credits of high school science in addition to the courses completed in middle school. ()

046. Social Studies. (Five (5) credits required), including government (two (2) credits), United States 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. (4-11-06)

057. Humanities. (Two (2) credits required). A course in interdisciplinary humanities, visual and performing arts, or world 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. (4-11-06)

068. Health/Wellness. (One (1) credit required). A course focusing on positive health habits. (7-1-00)

09. College Entrance Examination. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Learning Plan. ()

10. Senior Project. (Effective for all students that enter the ninth grade in the fall of 2009 or later.) A student shall complete a senior project that shall include a research paper and oral presentation by the end of grade twelve (12). ()

0711. Assessment. A student must achieve a proficient or advanced score on the ISAT. A student is not required to achieve a proficient or advanced score on the ISAT if: (4-11-06)

a. A student received a proficient or advanced scored on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam shall be approved by the State Board of Education, and must measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; (4-11-06)

b. A student appeals for another measure approved by a school district or LEA as outlined in Subsection 105.03; or (4-11-06)

c. A student has an IEP that outlines alternate requirements for graduation. (4-11-06)

d. The requirement will be phased in providing the following exemptions for the calendar year of 2006 and 2007. (4-11-06)

i. Calendar year of 2006. A student is not required to achieve a proficient or advanced score on the ISAT if: (4-11-06)

(1) A student took the ISAT and was within six (6) Rasch Units (RIT points) of proficiency; (4-11-06)

(2) A student has a score of seventeen (17) on the ACT or two hundred (200) on the SAT in English and a score of nineteen (19) on the ACT or four hundred sixty (460) on the SAT in Math; (4-11-06)

(3) A student has an IEP that outlines alternate requirements for graduation; (4-11-06)

(4) A student is considered an LEP student through a score determined on the state language proficiency test and has been in an LEP program for three (3) academic years or less; (4-11-06)

(5) A student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or (4-11-06)

(6) A student appeals for another measure approved by the school district or LEA as outlined in Subsection 105.03. (4-11-06)

ii. Calendar year of 2007 ~~and subsequent classes~~. A student is not required to achieve a proficient or advanced score on the ISAT if: ~~(4-11-06)~~()

(1) A student took the ISAT and was within three (3) RIT points of proficiency; (4-11-06)

(2) A student has an IEP that outlines alternate requirements for graduation or adaptations are

recommended on the test; (4-11-06)

(3) A student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (4-11-06)

(4) A student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or (4-11-06)

(5) A student appeals for another measure approved by the school district or LEA as outlined in Subsection 105.03. (4-11-06)

iii. Calendar year of 2008 and subsequent classes. A student is not required to achieve a proficient or advanced score on the ISAT if: ()

(1) A student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; ()

(2) A student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; ()

(3) A student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or ()

(4) A student appeals for another measure approved by the school district or LEA as outlined in Subsection 105.03. ()

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0606

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 10, 2006.

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 33-105 and 33-110, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Revised English Language Development (ELD) Standards. Title III of the No Child Left Behind Act of 2001 mandates that all states develop standards for Limited English Proficiency (LEP) students. The new ELD standards follow the No Child Left Behind (NCLB) Title III guidelines and will enable teachers to design appropriate learning programs for incoming students and develop consistent measures of progress for each student.

The ELD standards incorporate the language domains of listening, speaking, reading, writing and comprehension. Each standard has a hierarchical organization of a general Standard descriptor, Goals as major skills within a Standard, and specific Objective statements within each Goal.

Limited English Proficiency (LEP) Program Accountability Plan. No Child Left Behind details the accountability component for Limited English Proficient students. There is federal flexibility for states to determine specific targets for student growth. The LEP Program Accountability Plan sets forth the federal requirements and sanctions and details the state determined growth targets. The Accountability plan is a necessary component of state compliance with the U.S. department of Education and district compliance with the state.

The LEP Accountability plan details the Title III federal requirements set forth for districts running Title III- LEP programs. Part I of the plan details NCLB requirements. Part II details the state developed annual objectives/targets and definitions. Part III details the sanctions and procedures for LEAs.

The three components and applicable targets included in the Title III Annual Measurable Achievement Objectives (AMAOs) are:

AMAO #1: Annual increases in the percent or number of LEP students making progress in acquiring English language proficiency, as determined by the IELA: English Language "Progress".

AMAO #2: Annual increases in the percent or number of LEP students attaining English language proficiency by the end of the school year, as determined by the IELA: English Language "Proficiency".

AMAO #3: LEA determination for making AYP (adequate yearly progress) on the spring ISAT for LEP students.

ISAT and IELA Cut Scores. Cut scores are the points where a student on the borderline between on performance level and the next no longer has a .67% chance of answering the items correctly.

The SBOE LEP Program had a three day process by which cut scores were established.

Cut scores were set using a Modified Bookmark technique. This method allowed participants to suggest cut scores for

performance levels by inserting a bookmark into an Ordered Item Booklet (OIB), what consists of real test items presented in order from least to most difficult.

Bookmark placement was done in three rounds. During the first round, panelists reviewed the ordered item booklets as a small group and then made their placement decisions individually. Placements were analyzed and impact data presented to the panelists between Round 2 and Round 3. Round 2 began with small-group discussion of the Round 1 placements, continued with across-table discussion of placements, and ended with individual review and (if the panelist wished) adjustment of Round 1 bookmark placement. Round 3 was procedurally identical to Round 2 and allowed panelists the opportunity to resolve any areas of indecision remaining after the first two rounds. The cut scores were then established and the technical report was written.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To be in compliance with amendments to governing law or federal programs.

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

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

The operational costs for full implementation of these the LEP rules detailed above will be in the form of additional staff time and associated funding for professional development. In order to implement the new English Language Development (ELD) standards, school districts will need to provide professional development training for all teachers in how to incorporate the ELD standards into the classroom. In addition, the sanctions for failure to meet the Accountability plan are that districts would need to change their means of service for LEP students in order to improve student performance. This may cost the districts money as they complete a school improvement or corrective action plan and provide more professional development and technical assistance to the teachers.

These costs would depend on each district and how much additional service is provided within the district, in addition to how many staff the district has to train.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rules need to be in place immediately in order to be in compliance with federal mandates.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Wendy St. Michell at 332-1586.

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 25, 2006.

DATED this 10th day of August, 2006.

Karen L. Echeverria
Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone /
(208) 334-2632 FAX

FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0606

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule:

(2-23-06)T

01. The Idaho Achievement Standards. The Idaho Achievement Standards as adopted by the State Board of Education on October 17, 2005. Copies of the document can be found on the State Board of Education website at ~~www.idahoboardofed.org~~ <http://www.boardofed.idaho.gov/index.asp>. ~~(2-23-06)T~~(8-10-06)T

02. The Idaho English Language Development Standards. The Idaho English Language Development Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (8-10-06)T

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (8-10-06)T

04. The Idaho English Language Assessment (IELA) Cut Scores. The Idaho English Language Assessment (IELA) Cut Scores as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (8-10-06)T

05. The Idaho Standards Achievement Tests (ISAT) Cut Scores. Cut Scores as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (8-10-06)T

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0601

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 23-932, 23-946(b), 23-1330 and 23-1408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 6, 2006.

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:

Rules governing display of licenses need to be added and/or changed to provide licensees with a 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. Definitions are added to clarify vague or conflicting references in Idaho Code, and some sections are updated to reflect changes in licensing practices.

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

No fee is imposed or increased by these rules changes.

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

No fiscal impact is anticipated from these rules changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because associations representing affected parties were consulted in the drafting of these rules changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lieutenant Bob Clements, Idaho State Police Alcohol Beverage Control, (208) 884-7060 or Robert.Clements@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 13, 2006.

DATED this 16th day of August, 2006.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 W. Stratford Drive
P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7000 / (208) 884-7090 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0501-0601

000. LEGAL AUTHORITY.

The Director of the ~~Department of Law Enforcement~~ Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol beverage enforcement, pursuant to Sections 23-932, 23-946(b), 23-1330 and 23-1408, Idaho Code. (1-1-94)()

(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." (2-20-01)()

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Alcohol Beverage Control, P.O. Box 700, Meridian, ID 83680-0700. ~~Office~~ Lobby hours are Monday through Friday, 8 a.m. to 5 4:30 p.m. (2-20-01)()

(BREAK IN CONTINUITY OF SECTIONS)

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. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (3-20-04)()

03. Multipurpose Arena. For the purposes of Section 23-944(3), Idaho Code, a multipurpose arena is defined as a premises with permanent and securely fastened spectator type seating of a minimum capacity of one thousand (1,000), encompassing a stage or arena which sole purpose is for community events or sports competition. ()

034. 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~~ is 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)()

05. Partition. A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: ()

- a.** Permanently fixed from the premises ceiling to the premises floor. ()
- b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. ()

c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure. ()

d. All partitions must be approved by the Director. ()

06. **Place.** For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. ()

047. **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-premises 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. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following:
(3-20-04)()

a. An established menu identifying the individually priced meals for consumption; (3-20-04)

b. Food service and preparation occurs on the premises by establishment employees; (3-20-04)

c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)

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. (3-20-04)

058. **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~~ is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, ~~shall is not be deemed~~ a transfer. (3-13-02)()

011. GENERAL PROVISIONS.

01. Repeal of Prior Rules. The Director intends to promulgate a uniform and consistent set of alcoholic beverage rules. Accordingly, all rules adopted before the effective date of this chapter (Sections 000 through 021), which concern or involve the licensing of alcoholic beverages, specifically rules 1-L; 2-L; 3-L; 4-L; 6-L; 10-L; 11-L; 1-B; 2-B; 3-B; 5-B; 6-B; 7-B; 9-B; 11.05.A,1.0; 11.05.A,1.1; and 11.05.A,1.2, are hereby repealed and declared null and void. (7-1-93)

02. Delegation of Authority to License Alcoholic Beverages. The Director hereby delegates his authority for the licensing of establishments which sell alcoholic beverages, as contained in Title 23, Chapters 9, 10, and 13, Idaho Code, to the, Alcohol Beverage Control Bureau, Idaho State Police. All applications and inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau at P.O. Box 700, Meridian, Idaho 83680. The Alcohol Beverage Control Bureau ~~shall~~ provides forms for all applications and inquiries. ~~Provided, however, that~~ Nothing contained herein shall interfere with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). (3-31-95)()

03. Authority to Stagger the Renewal of Licenses to Sell Alcohol. For the purposes of Sections 23-908, 23-1010 and 23-1316, Idaho Code, the Director may adjust the renewal month to accommodate population increases. The following table sets out the notification months and renewal months established to renew licenses to sell alcohol:

| Renewal Notices | County | Renewal Month |
|------------------------|---------------|----------------------|
| January | Kootenai | 1-Mar |
| January | Benewah | 1-Mar |
| February | Ada | 1-May |
| March | Ada | 1-May |
| April | Canyon | 1-Jun |
| April | Owyhee | 1-Jun |
| April | Payette | 1-Jun |
| May | Twin Falls | 1-Jul |
| May | Gooding | 1-Jul |
| May | Camas | 1-Jul |
| May | Lincoln | 1-Jul |
| May | Jerome | 1-Jul |
| June | Cassia | 1-Aug |
| June | Minidoka | 1-Aug |
| June | Butte | 1-Aug |
| June | Blaine | 1-Aug |
| June | Power | 1-Aug |
| July | Lemhi | 1-Sep |
| July | Custer | 1-Sep |
| July | Boise | 1-Sep |
| July | Valley | 1-Sep |
| August | Elmore | 1-Oct |
| August | Clark | 1-Oct |
| August | Fremont | 1-Oct |
| August | Jefferson | 1-Oct |
| August | Madison | 1-Oct |
| August | Teton | 1-Oct |
| August | Bonneville | 1-Oct |
| September | Bingham | 1-Nov |
| September | Bannock | 1-Nov |
| September | Caribou | 1-Nov |
| September | Oneida | 1-Nov |
| September | Franklin | 1-Nov |
| September | Bear Lake | 1-Nov |

| Renewal Notices | County | Renewal Month |
|-----------------|-------------------|---------------|
| October | Boundary | 1-Dec |
| October | Bonner | 1-Dec |
| October | Shoshone | 1-Dec |
| November | Adams | 1-Jan |
| November | Gem | 1-Jan |
| November | Washington | 1-Jan |
| December | Latah | 1-Feb |
| December | Nez Perce | 1-Feb |
| December | Idaho | 1-Feb |
| December | Lewis | 1-Feb |
| December | Clearwater | 1-Feb |
| Renewal Notices | Certs of Approval | Renewal Month |
| November | Out of State | 1-Jan |

(5-3-03)

012. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.

01. Transfer of License Subject to Sanctions. The Director of the Idaho State Police may deny the transfer of an alcoholic beverage license which is subject to possible disqualification, revocation or suspension under the provisions of Title 23, Chapters 9, 10, and 13, Idaho Code, or these rules, when an action has been filed to such effect before the Idaho State Police pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (7-1-93)

02. Death or Incapacity of Licensee. In the event of the incapacity, death, receivership, bankruptcy, or assignment for the benefit of creditors of a licensee, his guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may, upon written authorization from the Alcohol Beverage Control Bureau, continue the business of the licensee on the licensed premises for the duration of the license or until the business is terminated. Any person operating the licensed premises under this regulation must submit a signed agreement that he will assume all of the responsibilities of the licensee for operation of the premises in accordance with law. A person operating licensed premises under the regulation must demonstrate to the satisfaction of the Alcohol Beverage Control Bureau that he is qualified to hold an alcoholic beverage license. A guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may renew or transfer a license so held, in the same manner as other licensees, subject to the approval of the Alcohol Beverage Control Bureau. (Sections 23-908(1), 23-1005A, and 23-1317, Idaho Code). (3-31-95)

03. Authorization to Transfer and Assignment of Privilege to Renew. Any person applying to renew a liquor license who was not the licensee at the applicable premises for the preceding year, must submit with the application to renew, a written Authorization to Transfer and Assignment of Privilege to Renew signed by the current licensee. (7-1-93)

04. Temporary Permits. When application for transfer of an alcoholic beverage license has been made, the Alcohol Beverage Control Bureau, in its discretion, may authorize issuance of a temporary permit during the review of the application, during which time the applicant for transfer may conduct business as a temporary permit holder. The permit holder, in accepting the temporary permit, ~~shall be~~ is responsible for complying with all statutes and rules pertinent to the sale of alcoholic beverages. Sanctions against such permit holder, whether civil, administrative, or criminal ~~shall~~ lies with the permittee, and acceptance of the permit ~~shall~~ constitutes a waiver of any defenses by permit holder based upon the fact that the permit holder is not, technically, a licensee. The Alcohol

Beverage Control Bureau may withdraw a temporary permit it has issued pursuant to this rule at any time without hearing or notice. ~~(3-31-95)~~(____)

05. Product Replacement and Credit. Any beer or wine products removed from the licensed retailer's premises by a wholesaler/distributor for quality control or public health ~~shall~~ are not be considered to be a violation of Section 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if: ~~(8-1-95)~~(____)

a. The packages or kegs are replaced with identical product and quantity; or (8-1-95)

b. In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion ~~which shall be redeemed on subsequent alcoholic beverage purchases by the retailer~~; or ~~(8-1-95)~~(____)

c. In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (8-1-95)

d. In the case of a licensed establishment which is in operation no less than two (2) months and no more than nine (9) months of each year, prior to its period of closure, it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by the same retailer. (8-1-95)

e. Credit is given to a retailer; ~~as authorized herein, shall be given~~ for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. ~~(8-1-95)~~(____)

06. Expiration of Licenses. When a county has, pursuant to Sections 23-927 and/or 23-1012, Idaho Code, passed an ordinance extending the hours of sale of liquor and/or beer to two o'clock a.m. (2:00 a.m.), all liquor and/or beer licenses in that county ~~shall~~ expire at two ~~o'clock~~ a.m. (~~2:00~~ a.m.), on ~~January 1st~~ the first of the month of the year following their issuance. (Section 23-908(1), Idaho Code). ~~(7-1-93)~~(____)

07. Maintenance of Keg Receipts. A Licensees shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. ~~(7-1-93)~~(____)

013. PRIORITY LISTS.

01. Priority Lists for Incorporated City Liquor Licenses. The Alcohol Beverage Control Bureau ~~shall~~ maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list ~~shall be~~ is maintained for each city. A person, partnership, or corporation desiring to be placed on a priority list shall file a completed application for an incorporated city liquor license, accompanied by payment of one-half (1/2) of the annual license fee. Such application need not show any particular building or premises upon which the liquor is to be sold, nor that the applicant is the holder of any license to sell beer. Priority on the list ~~shall be~~ is determined by the earliest application, each succeeding application ~~shall be~~ is placed on the list in the order received. ~~(3-31-95)~~(____)

02. Written Notification. When an incorporated city liquor license becomes available Alcohol Beverage Control ~~shall~~ offers it in writing to the applicant whose name appears first on the priority list. If the applicant does not notify the Alcohol Beverage Control Bureau in writing within ten (10) days of receipt of the notice of his intention to accept the license, the license ~~shall be~~ is offered to the next applicant in priority. An applicant accepting the license shall have a period of ~~ninety~~ one hundred eighty (9180) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. Provided, however, that upon a showing of good cause the Director of the Idaho State Police may extend the time period in which to complete the necessary requirements for a period not to exceed ~~sixty~~ ninety (690) days. ~~(3-31-95)~~(____)

03. Refusal to Accept Offer of License or Failure to Complete Application for License. An applicant refusing a license offered under this rule or an applicant who fails to complete his application may have his name placed at the ~~bottom~~ end of the priority list upon his request. Should the applicant holding first priority refuse or

fail to accept the license or to complete the application within the time specified, the applicant shall be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list.

(7-1-93)()

04. Limitations on Priority Lists. An applicant shall hold only one position at a time on each incorporated city priority list. An applicant must be able to demonstrate to the Director the ability to place an awarded license into actual use as required by Section 23-908(4), Idaho Code and these rules. An applicant for a place on an incorporated city liquor license priority list may not execute an inter vivos transfer or assignment of his place on the priority lists. For the purposes of this rule, "inter vivos transfer or assignment" ~~shall~~ means the substitution of any individual; partnership; corporation, including a wholly owned corporation; organization; association; or any other entity for the original applicant on the waiting list. An attempt to assign inter vivos a place on an incorporated city liquor license priority list shall result in the removal of the name of the applicant from the lists. An applicant, however, may assign his or her place on an alcoholic liquor license priority list by devise or bequest in a valid will. A place on an incorporated city liquor license priority list becomes part of an applicant's estate upon his or her death.

(7-1-93)()

05. Priority Lists Where Licenses Are Available. The Alcohol Beverage Control Bureau shall not maintain a list for a city in which a liquor license is available, nor for a city that does not permit retail sale of liquor. If, prior to the promulgation of this rule, the Alcohol Beverage Control Bureau has maintained a priority list for any such city, the list shall be abolished and all license fees returned to the respective applicants.

(3-31-95)

014. CONDUCT OF LICENSED PREMISES.

Upon request of an agent of the Director, a licensee, or anyone acting on his behalf, ~~shall~~ must produce any records required to be kept pursuant to Title 23, Chapters 9, 10, or 13, Idaho Code, and ~~shall~~ permit the agent of the Director or peace officer to examine them and ~~shall~~ permit an inspection of the licensee's premises. Upon request of a peace officer, a licensee, or anyone acting on his behalf, ~~shall~~ must permit an inspection of the licensee's premises. Any inspection performed pursuant to this rule ~~shall~~ must occur during the licensee's regular and usual business hours. The failure to produce such records or to permit such inspection on the part of any licensee ~~shall be~~ is a violation of this rule. A violation of this rule, federal or state law or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037 and 23-1331, Idaho Code.

(7-1-93)()

015. -- 020. (RESERVED).

021. AGE RESTRICTION REQUIREMENTS.

01. Over/Under Clubs. Minors shall not enter, remain or loiter in any licensed establishment that sells alcohol by the drink except for those premises listed in Section 23-944, Idaho Code.

()

042. Posting of Age Restriction Signs. Sections 23-945 and 23-1026, Idaho Code, require every alcoholic beverage licensee to post an age restriction sign. Such sign ~~shall~~ must contain the following words in lettering of at least one (1) inch in height: "Admittance of persons under twenty-one (21) years of age prohibited by law." Such sign ~~shall~~ must be placed conspicuously over or on the door of each entrance to the licensed premises and must be clearly visible from the exterior approached to such premises.

(7-1-93)()

023. Counterfeit or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents ~~confiscate~~ receive age identification documents ~~that appear to be mutilated, altered, or fraudulent which have been lost or voluntarily surrendered,~~ they shall deliver ~~them~~ the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within fifteen (15) days from the date they were received, found or voluntarily surrenders. When identification documents that appear to be mutilated, altered or fraudulent are presented to a licensee, their employees or agents, they must contact law enforcement and/or refuse service.

(3-31-95)()

IDAPA 11 - IDAHO STATE POLICE

11.10.01 - RULES GOVERNING THE ILETS - IDAHO LAW ENFORCEMENT TELETYPEWRITER SYSTEM

DOCKET NO. 11-1001-0601 (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 Section 19-5203(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 18, 2006.

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 majority of the changes are to update language in the rules to become consistent with recent statutory changes and to more clearly identify the sanctions for misuse of the system. There is also a fee change approved by the ILETS Board at their May meeting.

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

This changes the fees charged for access and usage of the Idaho Public Safety and Security Information System, known as ILETS. The fees will increase to all agencies: local, state, and federal by 25% beginning on October 1, 2007. The amount of the change to each agency depends upon the fees currently paid. This will have a positive impact on the ILETS Fund used to operate and maintain the system. The ILETS Board examined the current fee structure of the system and the costs of operating the system. The Board analyzed the differences and the future needs of the system to determine that an increase was needed and unanimously approved a 25% increase in both the access fee and the usage fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: It is anticipated that the total impact to the state agencies using the ILETS system will be less than \$10,000.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because affected parties are represented on the ILETS Board, and ILETS Board members are charged with informing their respective constituencies of intended changes to the system.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Idaho State Police Bureau of Criminal Identification, (208) 884-7136 or Dawn.Peck@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 23rd day of August, 2006.

Lieutenant Colonel Kevin Johnson
Deputy Director
Idaho State Police
700 W. Stratford Drive
P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7200 / (208) 884-7090 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1001-0601

**11.10.01 - RULES GOVERNING ~~ILETS~~ - THE IDAHO ~~LAW ENFORCEMENT TELETYPEWRITER~~
PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM**

000. LEGAL AUTHORITY.

Title 19, Chapter 52, Idaho Code, creates an ~~teletypewriter communications~~ information system board and authorizes it to make rules necessary to establish and operate the Idaho ~~Law Enforcement Teletypewriter~~ Public Safety and Security Information System, known as ("ILETS"). (3-20-04)()

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 11.10.01, "Rules Governing ~~ILETS~~ Idaho ~~Law Enforcement Teletypewriter~~ Public Safety and Security Information System". (3-20-04)()

02. Scope. These rules relate to the governance and operation of the Idaho ~~Law Enforcement Teletypewriter~~ Public Safety and Security Information System. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

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: (3-20-04)

- a. "Criminal Justice Information Systems," 28 CFR Part 20 (July 1, 2003~~6~~); (3-20-04)()
- b. "Criminal Justice Information Systems--CJIS Security Policy," Federal Bureau of Investigation, National Crime Information Center, Version ~~3.1~~ 4.3 (~~September~~ December 200~~2~~5); (3-20-04)()
- c. "National Crime Information Center 2000, Operating Manual," Federal Bureau of Investigation, National Crime Information Center (~~December 1999~~ June 2005); (3-20-04)()
- d. "National Law Enforcement Telecommunication System, Users Guide," NLETS, Users Guide, (~~January 1,~~ August 200~~3~~5); (3-20-04)()
- e. "National Law Enforcement Telecommunication System, Policies and Procedures," NLETS, Policies and Procedures, (May 1, 2002). (3-20-04)

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)

010. DEFINITIONS.

01. Access Agency. An agency that electronically accesses ILETS through the services of an interface

- agency. (3-20-04)
- 02. 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)
- 03. Associated System.** Any automated or manual information system that is accessible through ILETS. (3-30-01)
- 04. Board.** The board created by Title 19, Chapter 52, Idaho Code to establish priorities and operational policies and procedures relating to ILETS. (3-20-04)
- 05. 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 a 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. (3-20-04)
- 06. Department.** The Idaho State Police, or its successor agency. (3-20-04)
- 07. Executive Officer.** A position on the ILETS Board filled by the director of the Idaho State Police, or its successor agency. (3-20-04)
- 08. 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)
- 09. ILETS.** The Idaho ~~Law Enforcement Teletypewriter (telecommunication)~~ Public Safety and Security Information System as established by the director of Idaho State Police pursuant to Title 19, Chapter 52, Idaho Code, includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry that comprise the system. (3-20-04)(____)

10. Interface Agency. An agency that has management control of a computer system directly connected to ILETS. (3-20-04)

11. 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 gives the criminal justice agency authority to set and enforce policies governing the non-criminal justice agency's access to ILETS. (3-20-04)

12. NCIC 2000. The Federal Bureau of Investigation National Crime Information Center, is a computerized information system that includes telecommunications lines and 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. (3-20-04)

13. NLETS. The ~~National Law Enforcement Telecommunication System, Incorporated~~ International Justice and Public Safety Information Sharing Network, is a national computerized message switching system that links national and state criminal justice information systems. (~~3-20-04~~)(____)

14. 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)

(BREAK IN CONTINUITY OF SECTIONS)

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 grants to the criminal justice agency the authority to set and enforce: (3-20-04)

a. Priorities of service; (3-30-01)

b. Standards for the selection, supervision, and termination of personnel authorized to access ILETS; (3-30-01)
and

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 reviews all requests for access to ILETS and determines 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. ~~(3-20-04)~~()

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 pays an annual access fee of four thousand dollars (\$4,000) for each telecommunication line drop to the agency. Effective October 1, 2007, the fee shall be five thousand dollars (\$5,000). ~~(3-20-04)~~()

b. An agency at the state, federal, or tribal level pays an annual access fee of seven thousand dollars (\$7,000) for each telecommunication line drop to the agency. Effective October 1, 2007 the fee shall be eight thousand, seven hundred fifty dollars (\$8,750). ~~(3-20-04)~~()

03. Usage Fee. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network pays 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 includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-20-04)

a. The usage fee is assessed according to the following schedule:

| Percentage of Total ILETS Message Traffic | Annual Usage Fee Prior to October 1, 2007 | Annual Usage Fee Effective October 1, 2007 |
|-------------------------------------------|----------------------------------------------|-----------------------------------------------|
| 0 - .25 % | \$500 | \$625 |
| .26 - .50 % | \$1,000 | \$1,250 |
| .51 - .75 % | \$2,000 | \$2,500 |
| .76 - 1.0 % | \$4,000 | \$5,000 |
| 1.01 - 1.50 % | \$6,000 | \$7,500 |
| 1.51 - 2.0 % | \$9,000 | \$11,250 |
| 2.01 - 5.0 % | \$13,500 | \$16,875 |
| > 5.01 % | \$20,250 | \$25,313 |

~~(3-20-04)~~()

b. The department will conduct audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee. This fee is effective for two (2) years and begins with the quarterly statement beginning October 1 of odd-numbered years. (3-20-04)

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 will be adjusted to reflect the combined historical usage. (3-20-04)

d. A new agency approved for direct ILETS access that does not have historical usage will be assessed an interim usage fee by the department pending the next audit of ILETS message traffic. The department sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal the interim usage fee set by the department to the ILETS board. (3-20-04)

e. As operator of ILETS, the department, in lieu of payment of fees, provides direct and in-kind support of network operations. The board reviews biennially the proportion of that support to the overall operating cost of the system. (3-20-04)

04. Billing and Payment. The department 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. (3-20-04)

05. Sanctions for Delinquency. Any user agency that becomes delinquent in payment of assessed fees is subject to sanctions under Section 028. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

028. USER AGENCY SANCTIONS.

01. Review of Violations. The board reviews violations of ILETS rules and may impose appropriate sanctions on access agencies. (3-20-04)

02. Objective of Sanctions. The objectives of the sanction procedure are as follows: (3-20-04)

a. To ensure the security, integrity, and financial stability of the ILETS. (3-30-01)

b. To create an awareness among 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. (3-20-04)

03. Class of Sanctions. Sanctions 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 are classed as either administrative (minor) or security (serious) violations. Security violations are defined as ones which have or could result in access of ILETS data by unauthorized individuals. All other violations are classed as administrative. (3-20-04)

04. Form of Sanctions. When imposing sanctions, the board considers the severity of the violation, the violation type, either administrative or security, and previous sanctions issued. The board may require the violating agency to submit a mediation plan showing how the violation will be corrected and future violations prevented. The board shall consider such a mediation plan, if submitted, when imposing sanctions. The board may impose as sanctions one (1) or more of the following: ~~(3-20-04)~~(____)

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)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0601

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 19-5107, 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 18, 2006.

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:

Adds definitions for "Correction Officer" and "Adult Probation and Parole Officer;" adds Correction Officers and Adult Probation and Parole Officers to the definition of law enforcement profession as it pertains to the two-year agreement so people working in those capacities get credit for time served; allows students attending the vocational law enforcement programs to be eligible for waivers for "uncharacterized" or "general under honorable conditions" discharges from military service; amends language to reflect changes made to Idaho Code 19-5109 during last legislative session; adds language to prevent decertified officers from obtaining future POST certification with the exception of Correction Officers; adds the Law Enforcement Code of Ethics to the rules; clarifies that peace officer, county detention officer, and communications specialist experience must be with a duly authorized law enforcement agency in order to count toward peace officer and detention officer certification; gives the POST Executive Director the authority to waive minor hearing deficiencies; gives the POST Executive Director the authority to waive "uncharacterized" and "general under honorable conditions" military discharges; clarifies the qualifications for the Supervisor certificate; and establishes the POST Hearing Board.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 25, 2006.

DATED this 22nd day of August, 2006.

Douglas L. Graves
Acting Executive Director
Idaho State Police/Peace Officer Standards and Training Council
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7049/(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-0601

010. DEFINITIONS.

- 01.** Act. Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02.** Adult Probation and Parole Officer. Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. ()
- 023.** Agency. A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. (4-5-00)
- 034.** Agency Head. A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. (4-5-00)
- 045.** College Credit. A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent accrediting agency. (7-1-93)
- 06.** Correction Officer. Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. ()
- 057.** County Detention Officer. An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)
- 068.** Crime of Deceit. Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Wilful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance

Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name—Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (3-15-02)

079. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

0810. Full Time. Employment of eighty (80) hours or more per month for ninety (90) consecutive calendar days. (7-1-93)

0911. High School. A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located. (7-1-93)

102. In-Service Training. Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

113. Juvenile Detention Officer. Any employee of a juvenile detention center which is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (3-15-02)

124. Juvenile Probation Officer. Any employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation and the supervision of juvenile offenders' compliance with court orders. (4-2-03)

135. Law Enforcement Profession. As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means a peace officer whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; ~~or~~ an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (7-1-93)()

146. Manual. This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

157. Part Time. Employment of less than eighty (80) hours per month for ninety (90) consecutive calendar days. (7-1-93)

168. Peace Officer. Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)

179. POST. The Idaho Peace Officer Standards and Training Program. (7-1-93)

1820. Prosecutor. A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting

attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

~~192~~**1. Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council approved school. (7-1-93)

~~20~~**2. Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer who does not meet the definition of a full- or part-time peace officer. All reserve officers shall be under supervision as set forth in these rules. (4-2-03)

~~21~~**3. School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

~~22~~**4. School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

~~23~~**5. Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

~~24~~**6. Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

~~25~~**7. Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

031. HEARING BOARD.

The POST Council may appoint a Hearing Board to hear all matters appropriately brought before the POST Council for decision, pursuant to Chapter 51, Title 19. ()

01. Appointment of Members. The chairman of the POST Council shall appoint three members of the POST Council to serve on the Hearing Board. The Hearing Board shall consist of a city chief of police, a county sheriff, and an attorney. ()

02. Recommended and Final Orders. Orders issued by the Hearing Board at the conclusion of proceedings shall be considered recommended orders and will become final orders only after POST Council's review pursuant to Section 67-5244, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Subsection 720.01. ()

03. Discovery. Pursuant to Section 19-5107, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 520 through 532, discovery may be conducted in contested cases before the Hearing Board and POST Council. ()

~~032~~ -- ~~039~~. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

053. MILITARY RECORD.

A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service will disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN), a "general" discharge, or an "uncharacterized" discharge may be grounds for rejection. In the case of a "general under honorable conditions" or "uncharacterized" discharge, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the

discretion to refer the application to the POST Council. In the case of a "general" discharge, the POST Council will review the application and determine whether the individual will be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

057. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

a. Hearing. The applicant must have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver to the above may be considered ~~by the Council~~ if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. If the applicant's unaided or aided hearing is between twenty-six (26) and forty (40) decibels, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the discretion to refer the application to the POST Council. If the applicant's unaided or aided hearing is over forty (40) decibels, the POST Council will review the application and determine whether the individual will be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (3-20-04)()

b. Vision. (7-1-93)

i. The applicant must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision must be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There must be no pathology of the eye; applicant must possess a minimum seventy percent (70%) proficiency of the Dvorine or equivalent color discrimination test. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. (3-20-04)

ii. The applicant must have uncorrected vision in each eye of no worse than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but must have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must be administered by an optometrist or ~~ophthalmologist~~ ophthalmologist to any applicant whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or worse. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, or juvenile probation officer. (3-20-04)()

c. Disease/Condition. The applicant must be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver to a physical defect may be considered by the Council upon the applicant's demonstration that the defect does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. (3-20-04)

d. Agency Physical Agility/Fitness Test. To determine the applicant's physical capability, a physical agility or fitness test based upon the job requirements of the appointing agency must be administered by the appointing agency to each applicant. (3-20-04)

02. Procedures. (7-1-93)

a. A POST Council-approved medical history form must be supplied by each applicant to the examining physician. The medical history must include information on past and present diseases, injuries and operations. (3-20-04)

b. A medical examination must be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. The physician must record his findings on the appropriate form or letter and must note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

081. AGREEMENT TO SERVE.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any peace officer attending such schools or programs or directly or indirectly receiving the aid authorized by Section 19-5109, Idaho Code, shall execute an agreement whereby said officer promises to remain within the law enforcement profession, as defined in Subsection 010.125, on a full time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation from the POST Basic Training Academy. (~~4-2-03~~)()

02. Pay Back. Except as provided below, any peace officer who fails to remain within the law enforcement profession, as defined in Subsection 010.125, on a full time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation from the POST Basic Training Academy, shall be required to pay back to the Council, the full amount of money set forth in the agreement. For the purposes of this rule, an officer who leaves full-time employment in the law enforcement profession and has not worked four thousand one hundred sixty (4,160) or more hours during the two (2) years following graduation from the POST Basic Training Academy shall be deemed to have failed to remain within the law enforcement profession, on a full time basis, for two (2) years following graduation from the POST Basic Training Academy. (~~4-2-03~~)()

a. If the officer remains within the law enforcement profession in excess of twelve (12) months but less than twenty-four (24) months and the officer's work within the law enforcement profession during that period averaged at least one hundred sixty (160) hours per month, the amount owed to the Council under Subsection 081.02 shall be prorated monthly and shall be reduced proportionately for each month from the date of graduation in which the officer was employed within the law enforcement profession for at least one hundred sixty (160) hours per month. (4-2-03)

b. If the officer resigns or is terminated for cause by the appointing agency, he shall owe the Council the amount set forth in the agreement. (3-15-02)

c. If the officer is terminated through no fault of his own by the appointing agency, he shall not owe the Council the amount set forth in the agreement. The agency shall provide the Council a letter stating that the officer was terminated through no fault of his own. (3-15-02)

03. Pay Back, Part-Time Basic Certificate. Any peace officer who is awarded a part-time basic certificate who fails to remain employed within the law enforcement profession in a position approved by the Council for the same amount of hours required in Subsection 081.02, shall be required to pay back to the Council the full amount of money set forth in the agreement. (4-2-03)

04. Position. The Council shall approve or disapprove positions on a case by case basis, after affording officers the opportunity to present information as to the duties, nature, and scope of the position. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer is appointed as an Idaho peace, detention, juvenile detention, or juvenile probation officer. (4-2-03)

03. Decertification. ()

a. The Council ~~may shall~~ decertify any officer who ~~pleads guilty or is found guilty, regardless of the form of judgment or withheld judgment~~ is convicted, as defined in Idaho Code Section 19-5109, of any felony or offense which would be a felony if committed in this state; The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; any unlawful use, possession, sale, or delivery of any controlled substance; or who willfully or otherwise falsifies or omits any information to obtain any certified status; or ~~who~~ violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. (7-1-99)()

b. Any officer decertified by the Council is not eligible for POST certification of any kind in the future except as a correction officer with approval by the POST Council. ()

04. Law Enforcement Code of Conduct. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality, and justice. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. In furtherance of these duties, I hereby adopt and accept the following code of conduct: (7-1-99)

a. I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute. (7-1-99)

b. I shall not possess or consume alcoholic beverages on duty or while in uniform on duty or off duty, except as expressly required for the lawful performance of my duties. Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty. (7-1-99)

c. I shall not engage in any illegal or unlawful harassment or intimidation of another, nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions. (7-1-99)

d. I shall not lie, give misleading information, or falsify written or verbal communications in official reports or in ~~their~~ my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department. (7-1-99)()

e. I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior-ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination. (7-1-99)

f. I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. (7-1-99)

05. Law Enforcement Code of Ethics. ()

a. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. ()

b. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty. ()

c. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. ()

d. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. ()

e. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. ()

(BREAK IN CONTINUITY OF SECTIONS)

095. LAW ENFORCEMENT EXPERIENCE.

Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist ~~with a duly constituted law enforcement agency~~. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 063, ~~shall~~ will be subject to the determination of the Council. (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

117. SUPERVISOR CERTIFICATE.

01. Requirements. For purposes herein, the term "first-line supervision position" means a position above the operational level which is occupied by an individual who, in the upward chain of command, principally is responsible for the direct supervision of non-supervisory personnel of an agency and most commonly holds the rank of sergeant. A candidate for the Supervisor Certificate ~~shall~~ must: (4-2-03)()

a. Possess the Intermediate or Advanced Certificate, Level II or III Detention Officer Certificate, or Level II or III Communications Specialist Certificate. (4-2-03)()

b. Have satisfactorily completed one hundred (100) hours of POST-certified supervisory-level

training, of which fifty (50) hours ~~shall~~ must have been completed within three (3) years prior to submitting an application for the Supervisor Certificate. (4-2-03)(____)

c. Be presently appointed to a first-line supervision position with an Idaho law enforcement agency and ~~shall~~ must have served satisfactorily in that position for a minimum of one (1) year prior to application. Proof of position responsibilities ~~shall~~ must be submitted to the POST Council in the form of a job description or other documentation from the hiring authority. (4-2-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

174. LAW ENFORCEMENT EXPERIENCE.

Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist ~~with a duly constituted law enforcement agency~~. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 063, ~~shall~~ will be subject to the determination of the Council. (4-2-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

327. ADMINISTRATION.

01. POST Council Administrative Rules. The vocational law enforcement program must maintain access to a current copy of the POST Council's Administrative Rules. (4-11-06)

02. Advisory Board/Committee. The vocational law enforcement program must have an advisory board/committee comprised of the POST Executive Director or his designee and criminal justice executives from several area agencies/organizations representative of the region the vocational program serves. (4-11-06)

a. The advisory board/committee must elect a chairman and vice-chairman from among the agency heads on the board/committee. The terms of office should be initially staggered. No chairman or vice-chairman may serve in that capacity for longer than four (4) consecutive years. (4-11-06)

b. The chairman or vice-chairman is responsible for scheduling and setting the agendas for all advisory board/committee meetings as well as for working with the program coordinator and/or administration of the vocational law enforcement program. The chairman or vice-chairman may perform other duties as necessary. (4-11-06)

03. Waiver Requests. The chairman of the advisory board/committee may request a waiver from the POST Executive Director for a student who, more than two (2) years prior to application, was convicted of DUI; a misdemeanor other than a sex crime, crime of deceit, or drug offense; driving without privileges; ~~or~~ had his driver's license suspended; or received a "general under honorable conditions" or "uncharacterized" discharge from the military service. (4-11-06)(____)

a. The advisory board/committee chairman must conduct a thorough background investigation to include the review of all police and court documents, including arrest reports and court dispositions; military records; and a written explanation from the student fully describing the circumstances and disposition of each arrest and incident. (4-11-06)(____)

b. The advisory board/committee chairman has sole discretion in determining whether a waiver should be requested. The advisory board/committee may be afforded an appeal at the chairman's discretion or if the advisory board/committee has a policy in place. (4-11-06)

c. If the advisory board/committee chairman determines that a waiver should be pursued, he must submit a written request along with all documentation to the POST Executive Director. The request must indicate that the advisory board/committee is aware of the arrest or incident, has investigated the circumstances surrounding the arrest or incident, and that he recommends approval of a waiver. (4-11-06)(____)

d. If the POST Executive Director denies a request for a waiver, the decision is final unless the student obtains employment with an Idaho law enforcement agency and that agency requests a waiver from the POST Council. (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-0601

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 19-5107, 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 18, 2006.

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:

Amends rule to reflect the addition of a county clerk to the Juvenile Training Council.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 25, 2006.

DATED this 23rd day of August, 2006.

Douglas L. Graves
Acting Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7049
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1102-0601

010. DEFINITIONS.

01. **Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers

as recognized by POST Council. (3-30-01)

02. Challenge Exam. A test to determine a person's competence for waiver of the basic Juvenile Detention Academy. (3-30-01)

03. Juvenile Detention Center. A facility designed to temporarily detain juveniles who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-01)

04. Juvenile Detention Officer. Any employee of a juvenile detention center which is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (3-30-01)

05. Juvenile Training Council. An advisory group to the POST Council that is represented by the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention Academy. (~~3-30-01~~)(____)

06. Mandatory Certification. To issue a certificate to a juvenile detention officer based upon successful completion of the mandatory training requirements established by POST Council. (3-30-01)

07. Part-Time Juvenile Detention Officer. Any employee of a juvenile detention center which is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-11-06)

08. Voluntary Certification. To issue a certificate to a juvenile detention officer based upon successful completion of the voluntary training requirements established by POST Council. (3-30-01)

IDAPA 11 - IDAHO STATE POLICE

11.11.03 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE PROBATION OFFICERS

DOCKET NO. 11-1103-0601

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 19-5107, 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 18, 2006.

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:

Amends rule to reflect the addition of a county clerk to the Juvenile Training Council.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 25, 2006.

DATED this 23rd day of August, 2006.

Douglas L. Graves
Acting Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7049
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1103-0601

010. DEFINITIONS.

01. **Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers

as recognized by POST Council. (5-3-03)

02. Challenge Exam. A test to determine a person's competence for waiver of the basic Juvenile Probation Academy. (5-3-03)

03. Juvenile Probation Department. Any public or private agency administered by or contracted with the court, made up of one (1) or more staff to provide juvenile probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. (5-3-03)

04. Juvenile Probation Officer. Any employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation and the supervision of juvenile offenders' compliance with court orders. (5-3-03)

05. Juvenile Training Council. An advisory group to the POST Council that is represented by the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Probation Academy. ~~(5-3-03)~~(____)

06. Mandatory Certification. To issue a certificate to a juvenile probation officer based upon successful completion of the mandatory training requirements established by POST Council. (5-3-03)

07. Voluntary Certification. To issue a certificate to a juvenile probation officer based upon successful completion of the voluntary training requirements established by POST Council. (5-3-03)

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-0601

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 19-5107, 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 18, 2006.

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:

Extends the voluntary certification option for correction officers from 2008 to 2010 and for adult probation and parole officers from 2007 to 2009.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 25, 2006.

DATED this 22nd day of August, 2006.

Douglas L. Graves
Acting Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7049
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1104-0601

052. CORRECTION OFFICER CERTIFICATION.

01. Mandatory Certification. Every correction officer employed after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.16. (4-11-06)

02. Voluntary Certification. Correction officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 031 through 043, and 053 of these rules. However, the requirement for successful completion of the POST Basic Correction Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Correction Academy to be certified. This option closes on June 30, 2008~~10~~. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

063. ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.

01. Mandatory Certification. Every adult probation and parole officer employed after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.16. (4-11-06)

02. Voluntary Certification. Adult probation and parole officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 061, and 064 of these rules. However, the requirement for successful completion of the POST Basic Adult Probation and Parole Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST adult probation and parole certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Adult Probation and Parole Academy to be certified. This option closes on June 30, 2007~~9~~. (4-11-06)()

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-0601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 26-3105(1)(e), 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 18, 2006.

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 will amend agency access information and appropriately change existing Rules to address amendments to federal law and regulation, incorporated by reference within the Rules.

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

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted due to the simple nature of the changes made through the proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions or for further information regarding this proposed rulemaking, contact Anthony Polidori at (208)-332-8084.

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 25, 2006.

DATED this 16th day of August, 2006.

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0031
(208)-332-8000 Phone
(208)-332-8099 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 12-0110-0601

002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).

Written interpretations of these rules are available by mail from the Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Department of Finance, ~~Joe R. Williams Building, 700 West State Street~~ 800 Park Boulevard, Suite 200, Boise, Idaho, 83701~~2~~. The telephone numbers of the agency include (208) 332-8000 - Administration; and (208) 332-8002 - ~~Residential Mortgage~~ Consumer Finance Bureau. The telephone number of the facsimile machine is (208) 332-8099~~6~~. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. ~~(3-30-06)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

005. INCORPORATION BY REFERENCE (RULE 5).

IDAPA 12.01.10, "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporates by reference the full text of the following federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, 12 USCA 2601, et seq., as amended to and including January 1, 2007; Regulation X, 24 CFR 3500, et seq., as amended to and including January 1, 2007; the Truth in Lending Act, 15 USCA 1601, et seq., as amended to and including January 1, 2007; and Regulation Z, 12 CFR 225, et seq., as amended to and including January 1, 2007. Documents incorporated by reference may be viewed at the central office of the Department of Finance, as noted in Section 002. ~~(3-30-06)(_____)~~

006. DEFINITIONS (RULE 6).

Except where otherwise stated, terms used in these rules which are defined in the Idaho Residential Mortgage Practices Act shall have the same meaning as set forth in that Act. As used in these rules: (3-30-06)

01. Accredited Instruction. Means a course, video, motion picture, sound recording, or dissemination through electronic means of instructional material, which has been approved by the director for continuing professional education credit. (3-30-06)

02. Act. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

03. Certificate of Completion. Means written documentation issued by an education provider to a participant, in a manner approved by the director, evidencing the completion of a specific amount of credit hours of accredited instruction. (3-30-06)

04. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee to complete such process. (3-30-06)

05. Credit Hour. Means sixty (60) minutes of accredited instruction attained through actual attendance of a course or an allotted increment of time of accredited instruction through independent study, as predetermined by the director. (3-30-06)

06. Director. Means the director of the Idaho Department of Finance. (3-30-06)

07. Education Provider. Means a provider of accredited instruction. (3-30-06)

08. Participant. Means a person who attends accredited instruction for the purpose of accruing credit hours. (3-30-06)

09. Real Estate Settlement Procedures Act. Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2006~~7~~. ~~(3-30-06)(_____)~~

10. Regulation X. Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2006~~7~~. (~~3-30-06~~)(____)

11. Regulation Z. Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2006~~7~~. (~~3-30-06~~)(____)

12. Reporting Period. Means a two (2) year period of time commencing on November 1st and ending on October 31st unless otherwise specified by order of the director. (3-30-06)

13. Truth in Lending Act. Means the act set forth in 15 USCA 1601, et seq., as amended to and including January 1, 2006~~7~~. (~~3-30-06~~)(____)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 17, 2006.

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 36-104(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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amend the eligibility requirements for a Disabled Persons License to comply with statutory amendment (S 1385). Adopt eligibility requirements and permit conditions to implement the new 'children with special needs big game permit/tag' created by statutory amendment (S 1391). Amend the outfitter allocation rule to clarify the allocation process and to address outfitter concerns. Clarify the Handicapped Archery Permit rule to address equipment concerns of handicapped archers. Delete the Southeast Idaho Nonresident Deer License/Tag rule because this hunt is now a controlled hunt.

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 disabled persons, children with special needs, outfitters, and hunters.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2006 hunting seasons.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2784.

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 25, 2006.

DATED this 21st. day of August, 2006.

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) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0601

010. DEFINITIONS.

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term "domicile" means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

c. Where does the person and his immediate family live? (7-1-93)

d. Where does the person have his mail sent or forwarded to? (7-1-93)

e. Does the person remain listed in the telephone directory? (7-1-93)

f. Where does he register his automobiles? (7-1-93)

g. Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

h. Where does he have a driver's license? (7-1-93)

i. Where are his regular physicians and dentists located? (7-1-93)

04. Disabled. ~~Permanent and total disability is defined as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than sixty (60) months. A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb.~~ (7-1-93)(7-17-06)T

05. Eligible Applicant. A physically handicapped person certified by a physician licensed in the state in which the handicapped person resides, as meeting one (1) or more of the criteria set forth in Idaho Code, Section 36-1101(a)1 through 3, and one who is capable of holding, or holding and firing, without assistance from other persons, legal firearms or archery hunting and fishing equipment. (7-1-93)(7-17-06)T

06. Eligible Property. At least six hundred forty (640) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or antelope, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-5-00)

07. Landowner. Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser. (10-26-94)

08. ~~Medical Basis for Disability.~~ ~~An individual must have a medically determinable impairment. This means an impairment which has medically demonstrable, anatomical, physiological, or psychological abnormalities. Such abnormalities are medically determinable if they manifest themselves as signs or laboratory findings apart from symptoms. Abnormalities which manifest themselves only as symptoms are not medically determinable. Symptoms are the claimant's own perception of his or her physical or mental impairments. Signs are anatomical, physiological, or psychological abnormalities which can be observed through the use of medically acceptable clinical techniques. In psychiatric impairments, signs are medically demonstrable abnormalities of behavior, affect thought, memory, orientation and contact with reality. Laboratory findings are manifestations of anatomical, physiological, or psychological phenomena demonstrable by replacing or extending the perceptiveness of the observers senses and include chemical, electrophysiological, roentgenological or psychological tests. Statements of the applicant, including his or her own description of the impairment are alone insufficient to establish the presence of a physical or mental impairment.~~ **Permanent Disability.** Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (7-1-93)(7-17-06)T

09. ~~Medical Equivalency.~~ ~~A patient who is not working can meet the definition of disability if he or she has an impairment with specific clinical findings that are the same as or medically equivalent to any set of findings under the evaluation criteria as established by the U.S. Department of Health, Education, and Welfare, Social Security Administration, for disability under Title II and Title XVI.~~ (7-1-93)

10. ~~Permanent and Totally Disabled.~~ ~~Permanent and total disability is defined as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than sixty (60) months.~~ (7-1-93)

109. Resident. The term "resident" is defined in Section 36-202(r), Idaho Code. (7-1-93)

12. ~~Substantial Gainful Work.~~ ~~Substantial gainful work is any work of a nature generally performed for remuneration or profit involving the performance of significant physical or mental duties, or a combination of both. Work may be considered substantial even if performed part time and even if it is less demanding or less responsible than an individual's former work and it may be considered gainful even if it pays less than his former work.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

263. -- ~~302~~**1.** (RESERVED).

302. DISABILITY LICENSES.

Disabled Combination Hunting/fishing, Disabled Fishing, Disabled American Veterans Combination Hunting And Fishing License And Disabled American Veterans Fishing License. (7-17-06)T

01. Applicants for Disability Licenses Must Attest to the Disability Requirements. It is a violation for any person to misrepresent any information to obtain a disability license. (7-17-06)T

02. Required Documentation. Required documentation must be submitted in person or by mail to the

Department of Fish and Game set forth in Section 005. Applications must be supported by the documentation noted in either Subsection 302.02.a. or 302.02.b. of this rule. (7-17-06)T

a. License buyer must present, to an Idaho Department of Fish and Game office or select vendor one (1) of the following: (7-17-06)T

i. A current year's award statement in the individuals name showing that he or she is receiving SSI or SSDI benefits for the current year: (7-17-06)T

ii. A letter from the Railroad Retirement board verifying disability status and being dated within three years preceding the application for a disabled license: (7-17-06)T

iii. A letter from the from the Veterans Affairs office showing a percentage of disability of 40 percent (40%) or greater: (7-17-06)T

iv. A letter from the Veterans Affairs office showing an individual is receiving a nonservice-connected pension. (7-17-06)T

b. License buyer must initially present to an Idaho Fish and Game office a form, prescribed by the Department, showing physician certification of permanent disability, defined in Subsections 010.04 and 010.08 of this rule, 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, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. Physician certification will not be required for subsequent disability license application. (7-17-06)T

c. Individuals using the department form for a physician's permanent disability certification must complete and sign the application form. 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 Subsection 010.04 of this rule, qualifies the applicant and why. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for a permanent disability on the application. (7-17-06)T

(BREAK IN CONTINUITY OF SECTIONS)

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 bow or crossbow. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner medical license must accompany the application. ~~(3-20-04)~~(7-17-06)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 or a device attached that holds a bow at partial or full draw. (~~3-20-97~~)(7-17-06)T

(BREAK IN CONTINUITY OF SECTIONS)

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags. Pursuant to Idaho Code, Section 36-408(~~4~~), the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted areas with historic use will be considered for tag allocation. (~~7-1-99~~)(7-17-06)T

02. Controlled Hunt Areas. Only those controlled hunt areas ~~existing prior to 1998~~ with historic licensed deer and/or elk outfitted area(s) may be considered for a tag/permit allocation. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. (~~3-30-01~~)(7-17-06)T

a. The number of allocated tags will be ~~subtracted~~ in addition to from the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (~~3-30-01~~)(7-17-06)T

b. ~~Successful allocated controlled hunt applicants must use the services of an Idaho licensed outfitter.~~ Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's permit and tag by August 20. Successful applicants authorize the Department to provide names and addresses to the outfitter(s) licensed for that controlled hunt. (~~3-30-01~~)(7-17-06)T

c. Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

d. Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt permit and tag by August 20 will forfeit the opportunity to purchase a controlled hunt permit. The forfeited controlled hunt permit will then be listed as a leftover permit. The department will inform the Idaho Outfitters and Guides Board that a permit is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt permit at a department regional or headquarters office. (5-3-03)

e. The number of allocated tag/permits will be determined by using one (1) of the following options:

(3-30-01)

i. The number of allocated tags available within the controlled hunt area will be ~~based on a variable scale depending on the number of tags established by the Fish and Game Commission: less than fifty-one (51) tags = zero percent (0%); fifty-one (51) or more tags = maximum of three percent (3%)~~ no more than six percent (6%); or
(7-1-99)(7-17-06)T

ii. The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when permits equal or exceed zero point six (0.6) and rounded down when permits are less than zero point six (0.6); or (3-30-01)

iii. No tags will be allocated. (7-1-99)

~~f. Applicants who apply for an outfitter controlled hunt by their application authorize the Department to provide their names and addresses only to those outfitters licensed for that controlled hunt and only if they are successful in drawing a permit for that controlled hunt.~~ (3-30-01)

~~03. Controlled Hunts or Hunts with Limited Hunting Opportunities Established After 1997. Controlled hunts or hunts with limited hunting opportunities established after 1997, with historic licensed deer and/or elk outfitted areas, may be considered for allocated tags. The number of tags will be determined by the Fish and Game Commission using Subsections 505.02.e.i., 505.02.e.ii., and 505.02.e.iii.~~ (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

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; (4-6-05)

b. Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones; (3-20-04)

c. 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. (3-20-04)

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 and controlled hunt deer and elk tag fees 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. (4-6-05)

b. General season and controlled hunt deer and elk tag refunds for other than death, illness/injury, or military deployment of licensee. Non-resident general season and controlled hunt 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% |

(4-6-05)

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.** (3-20-04)~~

~~**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. (3-20-04)~~

~~**b.** Applications must be submitted on a department approved form. (3-20-04)~~

~~**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. (3-20-04)~~

~~d. A nonrefundable application fee of six dollars and fifty cents (\$6.50) must be submitted with the application. (3-20-04)~~

~~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. (3-20-04)~~

~~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. (3-20-04)~~

~~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. (3-20-04)~~

~~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). (3-20-04)~~

~~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. (3-20-04)~~

~~j. Those applying for the S.E. deer tag will not affect their ability to apply for controlled hunts. (3-20-04)~~

~~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. (3-20-04)~~

~~l. All other existing refund rules apply to those who have successfully drawn and have been issued the S.E. Idaho deer tag. (3-20-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

801. -- 9899. (RESERVED).

900. CHILDREN WITH SPECIAL NEEDS BIG GAME PERMIT/TAG.

01. Availability. The Department shall make available no more than ten (10) big game permit/tags available for children with life threatening medical conditions. (7-17-06)T

02. Issuance. The Commission delegates discretionary authority to issue a special needs permit/tag to the Director. (7-17-06)T

03. Eligibility. In order to receive a special needs big game permit/tag, a resident or nonresident minor (seventeen (17) years of age or younger) must have a life threatening medical condition as certified by a qualified and licensed physician. (7-17-06)T

a. A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3) of the Internal Revenue code. (7-17-06)T

b. The primary mission of the sponsoring organization must be to offer opportunities and experiences to minor children with life threatening medical conditions. (7-17-06)T

c. Minimum age requirements and hunter education requirements are waived for individuals applying for or receiving a special needs big game permit/tag. (7-17-06)T

04. Validity of Permit/Tag. The special needs permit/tag shall be valid for one (1) deer, one (1) elk, one (1) pronghorn, one (1) moose, one (1) black bear, or one (1) mountain lion as allowed by Commission regulation. (7-17-06)T

a. A license is not required to apply for or receive a special needs big game permit/tag. (7-17-06)T

b. The special needs permit/tag is valid in any open hunt, controlled or general, as provided by Commission regulation. (7-17-06)T

c. Applicants may only receive 1 special needs permit/tag in a lifetime. (7-17-06)T

d. In exercising hunting privileges, the holder of a special needs permit/tag must be accompanied by an adult in possession of a valid Idaho big game hunting license. (7-17-06)T

05. Application. Applications shall be on a form as prescribed by the Director. (7-17-06)T

a. Applications shall be submitted on behalf of applicants by an eligible nonprofit organization. (7-17-06)T

b. A copy of the nonprofit organization's IRS determination letter must accompany the application. (7-17-06)T

c. The application shall include the signature of a qualified and licensed physician stating the applicant has a life threatening medical condition. (7-17-06)T

06. Fees. All fees associated with applying for and receiving a special needs permit/tag shall be waived. (7-17-06)T

07. Hunters with Disabilities Permit Fees. All fees associated with applying for or receiving a Handicapped Persons Motor Vehicle Hunting Permit or a Handicapped Archery Permit by the recipient of a special needs permit/tag are waived. (7-17-06)T

08. Application of Big Game Rules. All rules governing the taking of Big Game Animals, IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply to holders of a special needs big game tag. (7-17-06)T

901. -- 999. (RESERVED).

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.05 - FISHING CONTESTS

DOCKET NO. 13-0105-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 21, 2005.

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 36-104(b) and 36-901, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To allow additional fishing contests on planted trout, to correct a procedural error which occurred two years ago when the Fishing Rules were last amended, to clarify certain definitions, and to make clerical corrections and updates.

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 anglers and fishing contest contestants.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to set the 2006-2007 fishing seasons, meet printing schedules for the Fishing Season Brochure, and the lack of an identifiable group to represent the many different tournament anglers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Fred Partridge (208) 287-2773.

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 25, 2006.

DATED this 21st day of August, 2006.

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) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0105-0601

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-901, Idaho Code, to adopt rules concerning fishing and fishing contests. (11-21-05)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.05.000, et seq., Idaho Fish and Game Commission Rules, IDAPA 13.01.05, "Rules Governing Fishing Contests." (11-21-05)T

02. Scope. These rules establish the permit requirements, allowable species, types of contest, and reporting requirements for fishing contests. (11-21-05)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(vi), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the headquarters office at 600 South Walnut, Boise, Idaho. (11-21-05)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." (11-21-05)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (11-21-05)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. (11-21-05)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

01. Catch-and-Release Contest. Any fishing contest where the contest rules require specific procedures to keep target species of fish alive and healthy and require that all fish caught by participants be released back into the contest water on the same day they were captured. (7-1-93)

02. Fishing Contest. Any fishing event, ~~where the participants pay an entry fee or where a prize is offered to participants based on the capture of an individual fish or the size or number of fish captured~~ which is based on the capture of an individual fish or the size or number of fish and total prize value is greater than one thousand dollars (\$1,000); or the individual entry fee is greater than twenty-five dollars (\$25); or the number of boats is greater than ten (10) or the number of individual contestants is greater than twenty (20); or there is a live fish weigh-in. ~~(7-1-93)~~(11-21-05)T

03. Harvest Contest. Any fishing contest where the contest rules do not require participants keep all target species of fish alive and healthy and release the fish back into contest waters, but allow participants to harvest or kill the fish. (7-1-93)

011. -- 099. (RESERVED).

100. PERMITS.

01. General. No person, organization, club, business, partnership, corporation, or other entity may sponsor a fishing contest whereby an entrance fee is charged or any prize is offered without having first obtained a fishing contest permit from the Idaho Department of Fish and Game. No permit will be issued for a harvest contest for the fish listed below. The Director may issue a permit for a catch-and-release contest for these species if he determines that there will be no harm to that fishery resource in the particular water where the contest is to take place: (7-1-93)

- a. Bull trout, *Salvelinus confluentus*; (7-1-93)
- b. White sturgeon, *Acipenser ~~thirty~~ transmontanus*; (~~7-1-93~~)(11-21-05)T
- c. Cutthroat trout, *Oncorhynchus clarki*; (7-1-93)
- d. Arctic grayling, *Thymallus arcticus*; and (7-1-93)
- e. Wild native trout in any streams. (~~7-1-93~~)(11-21-05)T

02. Applications for Fishing Contest Permits. Application for fishing contest permits shall be made on a form prescribed by the Department. The application must be submitted at least thirty (30) days prior to a catch-and-release contest and ninety (90) days prior to a harvest contest. The application shall include: (7-1-93)

- a. Name and address of the sponsor; (7-1-93)
- b. Name of the body of water or waters where the contest will take place, including second preference location if applicable; (7-1-93)
- c. Target species; (7-1-93)
- d. Whether the contest is catch-and-release or harvest; (7-1-93)
- e. Procedures to be used to ensure fish will be returned pursuant to Department requirements in a catch-and-release contest or to ensure that fishing will cease when the bag or possession limit is reached in a harvest contest; (7-1-93)
- f. Location and time of start and check-in; (7-1-93)
- g. Date(s) of contest; (7-1-93)
- h. Estimated number of participants; (7-1-93)
- i. Entry fee; (7-1-93)
- j. Description and value of prizes or awards; and (7-1-93)
- k. Signature of the applicant, or a person authorized to sign on behalf of an applicant organization. (7-1-93)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS

DOCKET NO. 13-0107-0601P

NOTICE OF 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 2006-2007 Upland Game Animals Seasons establishing seasons and limits for Upland Game (rabbit) hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

W. Dallas Burkhalter
Deputy Attorney General
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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 10, 2006.

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 36-104(b), 36-408, and 36-1101, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Simplify the understanding of weapon type opportunities; address concerns of handicapped archers; implement new outfitter allocation; address elk depredations in eastern Idaho; add an additional unit (Unit 69) to the Motor Vehicle Restriction Rule; lengthen the controlled hunt application period for deer, elk, antelope, and fall black bear; and clarify and correct hunt descriptions.

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 outfitters, handicapped archers, and hunters.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2006 hunting seasons, and the lack of an identifiable group to represent the various interests.

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.

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 25, 2006.

DATED this 21st day of August, 2006.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0601

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. (3-20-04)

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 and to the controlled hunts for each species. (4-6-05)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

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. (3-20-04)

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) may not apply for any controlled hunt. (4-6-05)
- 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 an antlered moose in Idaho may not apply for a moose permit for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit for antlerless moose EXCEPT that any person may apply for permits remaining unfilled after the controlled hunt draw. (4-11-06)
- i. 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)
- j. Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)
- k. 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)
- l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with

the outfitter before submitting the controlled hunt application. (4-11-06)

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. Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, antelope and fall black bear - Application period for first drawing - May 1 - ~~June 5.~~
~~(4-6-05)~~(3-10-06)T
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e. Deer, elk, antelope, and fall black bear - Application period for second drawing - August 5 - 15. (4-6-05)

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 set by Section 36-416, Idaho Code, 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. (4-6-05)

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)

08. Unclaimed Permits. Successful applicants for the first deer, elk, black bear, or antelope controlled hunt drawing must purchase and pick up their controlled hunt permit and tag by August 1. All controlled hunt tags and permits not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags and permits left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-6-05)

(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 fifteenth-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 holders of handicapped archery permits~~), or other implement other than a longbow, compound bow, or recurve bow, or: ~~(3-20-97)~~(3-10-06)T
- i. With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). ~~(7-1-93)~~(3-10-06)T
- 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, musket cap, or percussion cap. (4-6-05)

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 or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)

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. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

412. MOTORIZED VEHICLE USE RESTRICTION UNITS.

The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 45, 47, 48, 50, 51, 52, 53, 56, 58, 59A, 66, 69, 70, 72 (late season), 73, 75, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. (~~4-11-06~~)(3-10-06)T

(BREAK IN CONTINUITY OF SECTIONS)

600. GAME MANAGEMENT UNIT BOUNDARY DESCRIPTIONS.

01. Unit 1. All of BOUNDARY COUNTY and that portion of BONNER COUNTY north of the Pend Oreille River, Pend Oreille Lake and Clark Fork River. MYRTLE CREEK AND DAVID THOMPSON GAME PRESERVES - CLOSED. (7-1-93)

02. Unit 2. Those portions of BONNER and KOOTENAI COUNTIES within the following boundary: beginning at the intersection of the Idaho-Washington State line and the north bank of the Pend Oreille River, then east along the Pend Oreille River to Pend Oreille Lake at the railroad trestle in the southeast corner of the City of Sandpoint, then south along the railroad trestle, then east and south along the western shore line of Pend Oreille Lake to the south boundary ~~fence~~ of Farragut State Park, then west along the boundary ~~fence~~ to State Highway 54 at the west entrance to Farragut State Park, then west on State Highway 54 to U.S. 95, then south on U.S. 95 to Lake Coeur d'Alene at the source of the Spokane River, then west along the southern bank of the Spokane River to the Idaho-Washington State line, then north along the state line to the point of beginning. FARRAGUT STATE PARK and FARRAGUT WMA, CLOSED EXCEPT ~~TO ARCHERY~~ AS ALLOWED BY COMMISSION PROCLAMATION. (~~7-1-93~~)(3-10-06)T

03. Unit 3. Those portions of KOOTENAI, SHOSHONE, and BENEWAH COUNTIES within the following boundary: beginning at Mission Point on the St. Joe River and State Highway 3, then northeast on State Highway 3 to Interstate 90, then east on Interstate 90 to Kingston, then north on Forest Highway 9 (North Fork of the Coeur d'Alene River Road) to Forest Service Road 209 (Little North Fork of the Coeur d'Alene River Road), then northwest along Forest Service Road 209 then north along Forest Road 385 to the watershed divide between the Coeur d'Alene River and Pend Oreille Lake, then northwest along the divide to Bernard Peak, then north to Steamboat Rock on Pend Oreille Lake, then west along the lake shore to the south boundary ~~fence~~ of Farragut State Park, then west along the boundary ~~fence~~ to State Highway 54 at the west entrance of Farragut State Park, then west on State Highway 54 to U.S. 95, then south on U.S. 95 to Coeur d'Alene Lake, then southeast along the eastern shore line of Coeur d'Alene and Round Lakes to Mission Point, the point of beginning. (~~3-20-97~~)(3-10-06)T

04. Unit 4. Those portions of BONNER, KOOTENAI, and SHOSHONE COUNTIES within the following boundary: beginning on the Idaho-Montana State line at the watershed divide between Pend Oreille Lake and the Coeur d'Alene River, then southeast along the state line to the watershed divide between the Coeur d'Alene and St. Joe Rivers, then west along the divide to State Highway 3, then northeast on State Highway 3 to Interstate 90, then east on Interstate 90 to Kingston, then north on Forest Highway 9 (North Fork of the Coeur d'Alene River Road) to Forest Service Road 209 (Little North Fork of the Coeur d'Alene River Road), then northwest along Forest Service

Road 209 then north along Forest Road 385 to the watershed divide between the Coeur d'Alene River and Pend Oreille Lake, then northeast along the divide to the point of beginning. (~~3-20-97~~)(3-10-06)T

There are No Changes to Subsections 600.05 Through 600.99

(BREAK IN CONTINUITY OF SECTIONS)

700. CONTROLLED HUNT AREA DESCRIPTIONS -- DEER.

- 01. Hunt Area 1.** All of Unit 1 ~~excluding the Kootenai River drainage.~~ (~~4-5-00~~)(3-10-06)T
- 02. Hunt Area 8X.** All of Unit 8. (3-10-06)T
- 03. Hunt Area 8AX.** That portion of Unit 8A within one mile of private land. (For purposes of this hunt, "private land" does not include corporate timberlands). (3-10-06)T
- 024. Hunt Area 10AX.** That portion of Unit 10A ~~west of the Clearwater National Forest boundary, south of Forest Service Road 250, west of State Highway 11 north of Pierce and south of the Grangemont county road~~ within one (1) mile of private land. (For purposes of this hunt, "private land" does not include corporate timberlands). (~~7-1-98~~)(3-10-06)T
- 035. Hunt Area 11.** All of Unit 11. (10-26-94)
- 046. Hunt Areas 11A and 11AX-1.** All of Unit 11A. (~~3-15-02~~)(3-10-06)T
- 05. Hunt Area 11AX-2.** ~~That portion of Unit 11A south of State Highway 162 and east of State Highway 7.~~ (~~3-15-02~~)
- 07. Hunt Area 11AX.** All of Unit 11A and that portion of Unit 14 north and west of U.S. Highway 95 and Whitebird Creek. (3-10-06)T
- 068. Hunt Area 13.** All of Unit 13. (7-1-99)
- 079. Hunt Area 14.** All of Unit 14. (7-1-99)
- 10. Hunt Area 15X.** The western portions of Units 15 and 16 outside of and up to one mile inside the National Forest System Boundary. The National Forest System Boundary is a legislatively set boundary - it is not necessarily the boundary of Forest Service property. Please refer to a US Forest Service map for the location of this boundary. (3-10-06)T
- 0811. Unit Hunt Area 18.** All of Unit 18. (~~7-1-99~~)(3-10-06)T
- 09. Hunt Area 16X.** ~~That portion of Unit 16 south of the Selway River, and west of the O'Hara Creek Road (Forest Service Road 651), and that portion of Unit 15 north of the following boundary: Beginning at the junction of the South Fork Clearwater River with Forest Service Road 244, then east along Forest Service Road 244 to Forest Service Road 1106, then east along Forest Service Road 1106 to its junction with Forest Service Road 284.~~ (~~3-30-01~~)
- 102. Hunt Area 19A.** All of Unit 19A. (3-15-02)
- 113. Hunt Area 20A.** All of Unit 20A. (4-5-00)
- 124. Hunt Area 21.** All of Units 21, ~~21A,~~ 28, ~~29, 30, 37, and 37A~~ 36, 36A, and 36B.

~~(3-30-01)~~(3-10-06)T

15. **Hunt Area 21-1.** Private land within Units 21, 21A, 28, 29, 30, 30A, 36A, 36B, 37, and 37A. (3-10-06)T
- ~~136.~~ **Hunt Area 22.** All of Unit 22. (3-30-01)
- ~~147.~~ **Hunt Area 23.** All of Unit 23. (10-26-94)
18. **Hunt Area 23X.** That area of Unit 23 outside the National Forest System Boundary and within the Little Salmon River drainage, upstream from and including the Boulder Creek drainage on the west side of the Little Salmon River; and upstream from but excluding the Hazard Creek drainage on the east side of the Little Salmon River. (3-10-06)T
- ~~159.~~ **Hunt Area 25.** All of Unit 25. (7-1-93)
- ~~1620.~~ **Hunt Area 26.** All of unit 26. (4-5-00)
- ~~1721.~~ **Hunt Area 27.** All of Unit 27. (4-5-00)
- ~~18.~~ **Hunt Area 29.** All of Units 29, 37, and 37A. ~~(7-1-99)~~
- ~~1922.~~ **Hunt Area 31.** All of Unit 31. (3-30-01)
- ~~203.~~ **Hunt Area 32.** All of Unit 32. (3-30-01)
- ~~214.~~ **Hunt Area 32A.** All of Unit 32A. (3-30-01)
- ~~225.~~ **Hunt Areas 33.** All of Units 33 and 35, and that portion of Unit 34 south and west of the Landmark Stanley Road. (3-15-02)
26. **Hunt Area 37.** All of Units 37 and 37A. (3-10-06)T
- ~~237.~~ **Hunt Area 39-1.** All of Unit 39. (3-15-02)
248. **Hunt Area 39-2.** All of Unit 39 EXCEPT that portion of Unit 39 south and east of the Black's Creek Road and south of the South Fork of the Boise River. ~~(3-30-01)~~(3-10-06)T
259. **Hunt Area 39-3.** That portion of Unit 39 within the following boundary: Beginning at a point four hundred (400) yards north of State Highway 21 at the Ada County Line, south and west on a line four hundred (400) yards north of State Highway 21 to Warm Springs Avenue, and west on a line four hundred (400) yards north of Warm Springs Avenue to the Highlands-Table Rock powerline, north and west on the Highlands-Table Rock powerline to State Highway 55, north on Highway 55 to the Ada County Line, and southeast on the Ada County Line to the point of beginning. (4-5-00)
- ~~2630.~~ **Hunt Areas 40-1 and 40-3.** All of Unit 40. ~~(3-30-01)~~(3-10-06)T
- ~~2731.~~ **Hunt Area 40-2.** All of Units 40, 41, and 42. (4-5-00)
- ~~2832.~~ **Hunt Area 41.** All of Unit 41. (3-30-01)
- ~~2933.~~ **Hunt Areas 42-1 and 42-2.** All of Unit 42. ~~(3-30-01)~~(3-10-06)T
- ~~304.~~ **Hunt Area 43-1.** All of Unit 43. ~~(3-30-01)~~(3-10-06)T
- ~~315.~~ **Hunt Area 44-1.** All of Unit 44. (3-30-01)

~~326.~~ **Hunt Area 44-2.** All of Units 44, 45, and 52 *EXCEPT that portion of Unit 45 within the following boundary: Beginning at Bliss, then north on the Bliss-Hill City Road to the two-pole powerline at White Arrow Ponds (9.5 miles north of Bliss), then west along the two-pole powerline to U.S. Highway 20 (milepost 102.3), then southwest on U.S. Highway 20 to Mountain Home, then south on State Highway 51 to the Snake River, then upstream on the Snake River to the Malad River, then upstream on the Malad River to U.S. Highway 30, then northwest on U.S. Highway 30 to Bliss, the point of beginning.* (~~3-15-02~~)(3-10-06)T

~~337.~~ **Hunt Area 45-1.** *All of Unit 45, point of beginning. That portion of Unit 45 west of the Bliss-Hill City Road.* (~~3-15-02~~)(3-10-06)T

~~348.~~ **Hunt Area 45-2.** All of Unit 45, *EXCEPT that portion of Unit 45 within the following boundary: Beginning at Bliss, then north on the Bliss-Hill City Road to the two-pole powerline at White Arrow Ponds (nine point five (9.5) miles north of Bliss), then west along the two-pole powerline to U.S. Highway 20 (milepost 102.3), then southwest on U.S. Highway 20 to Mountain Home, then south on State Highway 51 to the Snake River, then upstream on the Snake River to the Malad River, then up the Malad River to U.S. Highway 30, then northwest on U.S. Highway 30 to Bliss, the point of beginning.* (~~3-15-02~~)(3-10-06)T

~~359.~~ **Hunt Area 45-3.** That portion of Unit 45 *within the following boundary: Beginning at Bliss, then north on the Bliss-Hill City Road to the two-pole powerline at White Arrow Ponds (9.5 miles north of Bliss), then west along the two-pole powerline to U.S. Highway 20 (milepost 102.3), then southwest on U.S. Highway 20 to Mountain Home, then south on State Highway 51 to the Snake River, then upstream on the Snake River to the Malad River, then upstream on the Malad River to U.S. Highway 30, then northwest on U.S. Highway 30 to Bliss, the point of beginning east of the Bliss-Hill City Road.* (~~3-15-02~~)(3-10-06)T

~~3640.~~ **Hunt Area 46.** All of Units 46, 47, 54, 55, and 57. (3-15-02)

~~3741.~~ **Hunt Area 47-1.** All of Unit 47. (7-1-98)

~~3842.~~ **Hunt Area 47-2.** All of Units 46 and 47. (10-26-94)

~~3943.~~ **Hunt Area 48.** All of Unit 48. (10-26-94)

~~404.~~ **Hunt Area 49.** All of Unit 49. (10-26-94)

~~69.~~ ~~41.~~ **~~Hunt Area 50X.~~** *All of Units 50, 51, 58, 59, 59A, 60, 60A, 61, 62, 62A, 63, 63A, 64, 65, 66, 67, and* (~~4-5-00~~)

~~425.~~ **Hunt Area 50-1.** That portion of Unit 50 west of U.S. Highway 93. (3-30-01)

~~436.~~ **Hunt Area 50-2.** All of Unit 50. (7-1-98)

~~447.~~ **Hunt Area 51.** All of Unit 51 and that portion of Unit 50 east of U.S. Highway 93. (3-30-01)

~~458.~~ **Hunt Area 52.** All of Unit 52. (3-30-01)

~~469.~~ **Hunt Area 52A.** All of Unit 52A. (Caution: See Craters of the Moon closure.) (~~7-1-93~~)(3-10-06)T

~~4750.~~ **Hunt Area 54.** All of Unit 54. (3-30-01)

~~4851.~~ **Hunt Area 55.** All of Unit 55. Most of the City of Rocks National Reserve is open to hunting. Information about hunting within the Reserve is available to permittees at ~~Department~~ IDFG offices and at the National Park Service office in Almo. (~~3-30-01~~)(3-10-06)T

~~4952.~~ **Hunt Area 56.** All of Unit 56. (10-26-94)

~~503.~~ **Hunt Area 57.** All of Unit 57. (3-30-01)

- ~~54.~~ **Hunt Area 58.** All of Units 58, 59, and 59A. (3-15-02)
- ~~52.~~ **Hunt Area 59.** All of Units 59 and 59A. (~~3-30-01~~)
- ~~53.~~ **Hunt Area 60-1.** All of Units 60, ~~61,~~ and 62A, and that portion of Unit 60A beyond one (1) mile north and west of the North (Henry's) Fork of the Snake River. (~~7-1-98~~)(3-10-06)T
- ~~54.~~ **Hunt Area 60A-2.** ~~That portion of Unit 60A south of the Dubois Kilgore Road and west of the Parker Salem Road (Red Road) and beyond one (1) mile north and west of the North (Henry's) Fork of the Snake River.~~ All of Units 60, 61, and 62A. (~~3-30-01~~)(3-10-06)T
- ~~57.~~ **Hunt Area 60X.** All of Units 60, 60A, 62, 63, 63A, 64, 65, 66, 67, and 69. (3-10-06)T
- ~~55.~~ **Hunt Area 61.** All of Unit 61. (3-20-97)
- ~~56.~~ **Hunt Area 62.** All of Unit 62. (3-15-02)
- ~~57.~~ **Hunt Area 63.** All of Unit 63. (~~7-1-99~~)
- ~~58.~~ **Hunt Area 63A.** All of 63A. (~~7-1-99~~)
- ~~59.~~ **Hunt Area 64.** All of Unit 64 and that portion of Unit 67 north and east of State Highway 26. (7-1-99)
- ~~60.~~ **Hunt Area 65X.** All of Unit 65. (~~7-1-98~~)
- ~~61.~~ **Hunt Area 66.** All of Unit 66. (3-30-01)
- ~~62.~~ **Hunt Area 67.** That portion of Unit 67 north and west of State Highway 31. (3-10-06)T
- ~~62.~~ **Hunt Area 68A.** All of Unit 68A. (3-20-97)
- ~~63.~~ **Hunt Area 69-1.** ~~That portion of Unit 69 north and east of the Grays Lake Long Valley Bone Iona Road.~~ All of Unit 69. (~~7-1-98~~)(3-10-06)T
- ~~64.~~ **Hunt Area 69-270.** All of Units ~~69~~ 56, 70, 73, 73A, and 78. (~~7-1-98~~)(3-10-06)T
- ~~65.~~ **Hunt Area 72.** All of Unit 72. (~~3-20-97~~)
- ~~66.~~ **Hunt Area 75.** All of Unit 75, 77, and 78. EXCEPT the private land in Unit 75 east and north of the Bear River is CLOSED. (3-15-02)
- 701. CONTROLLED HUNT AREA DESCRIPTIONS - ELK.**
- ~~01.~~ **Hunt Area 1.** That portion of Unit 1 within the Priest River Drainage and within the Pend Oreille River drainage downstream from Priest River. (3-10-06)T
- ~~02.~~ **Hunt Area 4.** All of Units 4 and 7. (3-20-97)
- ~~02.~~ **Hunt Area 8-1.** That portion of Units 8 and 8A north of the following line: Beginning at the western boundary of Unit 8 at its junction with State Highway 8, then east on Highway 8 to State Highway 9, then northwest on Highway 9 to State Highway 6, then north on Highway 6 to the Unit 8A boundary. (3-30-01)
- ~~03.~~ **Hunt Area 8-2.** That portion of Units 8 and 8A south of the following line: Beginning at the western boundary of Unit 8 at its junction with State Highway 8, then east on Highway 8 to Forest Service Road 1963 at Helmer, then south and east on Forest Service Road 1963 to Long Meadow Creek, then southeast along Long Meadow Creek to Dworshak Reservoir, then east along the shoreline of Dworshak Reservoir to the Unit 8A boundary

at Dent Bridge. (3-15-02)

045. Hunt Area 10A-1. That portion of Unit 10A west of the Clearwater National Forest boundary, south of Forest Service Road 250, south of State Highway 11 from Pierce to Weippe, and Jim Ford Creek from Weippe to its junction with the Clearwater River. (~~3-30-01~~)(3-10-06)T

056. Hunt Area 11-1. All of Unit 11. (~~3-30-01~~)(3-10-06)T

07. Hunt Area 11-2. That portion of Unit 11 within one (1) mile of cultivated fields and north and east of the follow boundary: Beginning at the Unit 11/13 boundary at the Nez Perce County/Lewis County line, then north on the Nez Perce County/Lewis County line to Soldiers Meadow Road, then west on Soldiers Meadow Road to ZaZa Road, then north on ZaZa Road to Waha Road, then north on Waha Road to Redbird Road, then west on Redbird Road to the boundary of the Craig Mountain WMA, then north and east along the Craig Mountain WMA boundary to the Snake River, then north along the Snake River to the Unit 8/11 boundary. (3-10-06)T

068. Hunt Area 11A. All of Unit 11A. (7-1-99)

079. Hunt Area 13. All of Unit 13. (3-30-01)

0810. Hunt Area 14. That portion of Unit 14 north of ~~the following line: Beginning on the Unit 14 west boundary on the Slate Creek Road (Forest Service Road 354), then east on the Slate Creek Road to Forest Service Road 221, then north on Forest Service Road 221 to the Unit 14 east boundary~~ and west of the following boundary: Beginning on the Unit 14 western boundary at John Day Creek, then east along the main fork of John Day Creek to the National Forest boundary, then north along the National Forest boundary to Forest Service Road 2025 (Skookumchuck Road), then east along Forest Service Road 2025 to Forest Service Road 221, then north along Forest Service Road 221 to the Unit 14 eastern boundary. (~~3-30-01~~)(3-10-06)T

0911. Hunt Area 18. All of Unit 18. (3-30-01)

102. Hunt Area 19A. All of Unit 19A. (3-30-01)

143. Hunt Area 21A. All of Unit 21A. (~~4-5-00~~)(3-10-06)T

124. Hunt Area 22-1. That portion of Unit 22 described as follows: Beginning at the junction of U.S. 95 and the West Fork Weiser River Road (Forest Service Road 127), then north on Forest Service Road 127 to Grouse Creek Road (Forest Service Road 123), then northwest on Forest Service Road 123 to the watershed divide between Lick Creek and Lost Creek drainages, then north on the divide between Lick Creek and Lost Creek drainages to Lick Creek Lookout, then west on Unit 22 boundary to the Snake River, then south on the Snake River to State Highway 71, then southeast on State Highway 71 to Cambridge, then north on U.S. 95 to the point of beginning. (3-30-01)

135. Hunt Area 22-2. That portion of Unit 22 as follows: Beginning at the junction of U.S. 95 and the West Fork Weiser River Road (Forest Service Road 127), then north on Forest Service Road 127 to Grouse Creek Road (Forest Service Road 123), then northwest on Forest Service Road 123 to the watershed divide between Lick Creek and Lost Creek drainages, then north on the divide between Lick Creek and Lost Creek drainages to Lick Creek Lookout, then east along Unit 22 boundary to U.S. 95 to the point of beginning. (5-15-95)

146. Hunt Area 22-3. All of Unit 22. (3-30-01)

157. Hunt Area 23-1. All of Unit 23. (10-26-94)

168. Hunt Area 23-2. That portion of Unit 23 within the Little Salmon River drainage, upstream from ~~but excluding the Round Valley Creek drainage on the west side of the Little Salmon River;~~ and including the Boulder Creek drainage on the west side of the Little Salmon River, and upstream from but excluding the Hazard Creek drainage on the east side of the Little Salmon River, ~~EXCEPT the Little Goose Creek drainage and the Goose Creek drainage above Little Goose Creek are CLOSED.~~ (~~3-30-01~~)(3-10-06)T

179. Hunt Area 23-3. That portion of Unit 23 west of U.S. 95 and north of, and excluding, the Boulder

Creek drainage. (3-30-01)

~~1820.~~ **Hunt Area 23-4.** That portion of Unit 23 which drains into the main Salmon River upstream from its confluence with the Little Salmon River to the French Creek-Burgdorf Road. (3-30-01)

~~1921.~~ **Hunt Area 24-1.** That portion of Unit 24 within the following boundary: Beginning at the junction of State Highway 55 and the Warm Lake Road, then east along Warm Lake Road to the Unit 24/25 boundary, then north along the Unit 24/25/19A boundary to the intersection of the Unit 24/19A/23 boundaries, then south along the Unit 24/23/32A boundary to Forest Service Road 186 at No Business Saddle, then southeast on Forest Service Road 186 to West Mountain Road, then south on West Mountain Road to Tamarack Falls Road, then east on Tamarack Falls Road to Norwood Road, then north on Norwood Road to West Roseberry Road, then east on West Roseberry Road to State Highway 55, then south on State Highway 55 to the point of beginning. EXCEPT Short Range Weapons ONLY in that portion within the following boundary: Beginning in McCall at the junction of State Highway 55 and Boydston Street, then south on Boydston Street to West Valley Road, then west and south along West Valley Road and West Mountain Road to Tamarack Falls Road, then east on Tamarack Falls Road to Norwood Road, then north on Norwood Road to West Roseberry Road, then east on West Roseberry Road to State Highway 55, then south on State Highway 55 to Farm-to-Market Road, then north on Farm-to-Market Road to Elo Road, then west on Elo Road to State Highway 55, then north on State Highway 55 to the point of beginning. ~~(3-30-01)~~(3-10-06)T

~~202.~~ **Hunt Area 24-2.** That portion of Unit 24 within the following boundary: Beginning north of Cascade at the junction of State Highway 55 and Warm Lake Road, then north on Highway 55 to West Roseberry Road, then west on West Roseberry Road to Norwood Road, then south on Norwood Road to Tamarack Falls Road, then west on Tamarack Road to West Mountain Road, then north on West Mountain Road to Forest Service Road 186, then northwest on Forest Service Road 186 to No Business Saddle, then south along the Unit 24/32A unit boundary to the intersection of the Unit 24/32A/33 boundaries at Smith's Ferry, then north along the Unit 24/33/25 boundary to Warm Lake Road, then west on Warm Lake Road to the point of beginning. EXCEPT Short Range Weapons Only within the following boundary: Beginning in Donnelly at the junction of State Highway 55 and West Roseberry Road, then west on West Roseberry Road to Norwood Road, then south on Norwood Road to Tamarack Falls Road, then west on Tamarack Falls Road to West Mountain Road, then south on West Mountain Road to Cabarton Road, then north on Cabarton Road to State Highway 55, then north on State Highway 55 to the point of beginning. ~~(3-30-01)~~(3-10-06)T

~~213.~~ **Hunt Area 24-3.** All of Unit 24. (4-5-00)

~~224.~~ **Hunt Area 25.** All of Unit 25. (3-30-01)

~~235.~~ **Hunt Area 28-1.** All of Unit 28. ~~(3-15-02)~~(3-10-06)T

~~24.~~ **Hunt Area 28-2.** All of Units 28 and 36B. ~~(3-15-02)~~

~~256.~~ **Hunt Area 29-1.** All of Unit 29. (7-1-99)

~~267.~~ **Hunt Area 29-2.** All of Units 29 and 37A. (7-1-99)

~~28.~~ **Hunt Area 30.** All of Unit 30. (3-10-06)T

~~279.~~ **Hunt Area 30-1.** All of Units 30, 30A, 58, 59, and 59A. (7-1-99)

~~28.~~ **Hunt Area 30-2.** All of Unit 30 and that portion of Unit 21A within the Carmen Creek drainage. ~~(3-30-01)~~

~~2930.~~ **Hunt Area 30A.** All of Unit 30A. (3-30-01)

~~301.~~ **Hunt Area 31-1.** All of Unit 31. That portion of Unit 31 that drains into the Snake River, upstream from and including the Grouse Creek Drainage to the U.S. Highway 95 bridge in Weiser; and that portion of Unit 31 that drains into Monroe Creek from its mouth upstream to and including the Sheep Creek drainage. ~~(3-30-01)~~(3-10-06)T

- ~~32.~~ **Hunt Area 31-2.** All of Unit 31. (3-10-06)T
- ~~343.~~ **Hunt Area 32-1.** That portion of Unit 32 ~~south and~~ east of the following boundary: Beginning at the ~~mouth of Big Willow Creek, north and east on Big Willow Creek to the point where Four Mile Road crosses Big Willow Creek, then north on Four Mile Road to the Riley Butte Road, then east on the Riley Butte Road to the North Crane Road, then north on the North Crane Road to the Emmett/Council Road, then north on the Emmett/Council Road to U.S. Highway 95~~ Unit 32/38 boundary at Emmett, then north on Highway 52 to the Van Dussen Road, then north on Four Mile Road to the Unit 32/32A boundary. (~~3-15-02~~)(3-10-06)T
- ~~34.~~ **Hunt Area 32-2.** All of Unit 32 south and east of the following boundary: Beginning at the Unit 32 boundary at Gardena, then west on the Brownlee Road to the Sweet Highway, then south to Highway 52, then south and west on Highway 52 to the Unit 32/38 boundary. (3-10-06)T
- ~~325.~~ **Hunt Area 32A.** All of Unit 32A. (3-30-01)
- ~~336.~~ **Hunt Area 33-1.** ~~That portion of Unit 33 outside of the exterior boundary of the Boise National Forest.~~ Beginning at the Unit 33 boundary on the Alder Creek Road (Forest Road 615) then west and north along the Unit 33/39 boundary to Banks, then north on the Unit 32/33 boundary to Smith's Ferry, then south on Forest Road 689 to Murray Saddle, then north along the watershed divide between the North Fork and the Middle Fork of the Payette River to Forest Road 696 (West Fork of Scriver Creek), then east on Forest Road 696 to Forest Road 693 (Scriver Creek), then south and east on Forest Road 693 to Forest Road 698 (Middle Fork Road), then south on Forest Road 698 to the Banks-Lowman Highway (Highway 17), then east on the Banks-Lowman Highway to Forest Road 615 (Alder Creek Road), then south on Forest Road 615 to the unit boundary, the point of beginning. (~~3-30-01~~)(3-10-06)T
- ~~347.~~ **Hunt Area 33-2.** All of Units 33 and 35 and that portion of Unit 34 south and west of the Landmark-Stanley Road. (3-30-01)
- ~~358.~~ **Hunt Area 36-1.** ~~All of Unit 36.~~ That portion of Unit 36 west of State Highway 75 and south of and including Redfish Lake Creek drainage. (~~3-30-01~~)(3-10-06)T
- ~~39.~~ **Hunt Area 36-2.** That portion of Unit 36 not included in Hunt Area 36-1. (3-10-06)T
- ~~40.~~ **Hunt Area 36A.** All of Unit 36A. (3-10-06)T
- ~~3641.~~ **Hunt Area 36A-1.** That portion of Unit 36A west of the East Fork of the Salmon River and that portion east of the East Fork of the Salmon River upstream from and including the West Pass Creek drainage. (3-30-01)
- ~~3742.~~ **Hunt Area 36A-2.** That portion of Unit 36A east of the East Fork of the Salmon River downstream from but EXCLUDING the West Pass Creek drainage; and that portion of Unit 50 north of Trail Creek Road and west of U.S. 93, and that portion of Unit 50 north of the Doublespring Pass Road east of U.S. Highway 93. (~~3-30-01~~)(3-10-06)T
- ~~3843.~~ **Hunt Area 36B.** All of Unit 36B. (4-5-00)
- ~~3944.~~ **Hunt Area 37.** All of Unit 37. (3-30-01)
- ~~405.~~ **Hunt Areas 37A-1 and 37A-2.** All of Unit 37A. (~~3-30-01~~)(3-10-06)T
- ~~416.~~ **Hunt Area 39-1.** That portion of Unit 39 south and east of ~~the Blacks Creek Road and the South Fork of the Boise River~~ State Highway 21. (~~7-1-98~~)(3-10-06)T
- ~~427.~~ **Hunt Area 39-2.** That portion of Unit 39 ~~south and east~~ north and west of State Highway 21. (~~7-1-98~~)(3-10-06)T

~~438.~~ **Hunt Area 39-3.** That portion of Unit 39 north and west of ~~State Highway 21~~ the following boundary: Beginning in Boise, north on the Bogus Basin Road to Bogus Basin, then north on Forest Service Road 374 (Boise Ridge Road) to the Unit 39 boundary at Hawley Mountain. ~~(7-1-98)~~(3-10-06)T

~~44.~~ **Hunt Area 39-4.** *That portion of Unit 39 north and west of the following boundary: Beginning in Boise, north on the Bogus Basin Road to Bogus Basin, then north on Forest Service Road 374 (Boise Ridge Road) to the Unit 39 boundary at Hawley Mountain and that portion of Unit 32 south of State Highway 52 in Boise and Gem Counties.* ~~(3-30-01)~~

~~459.~~ **Hunt Area 40.** All of Units 40, ~~41~~, and 42. ~~(3-30-01)~~(3-10-06)T

~~4650.~~ **Hunt Area 43.** All of Unit 43. (3-30-01)

~~4751.~~ **Hunt Area 44-1.** All of Unit 44. ~~(3-30-01)~~(3-10-06)T

~~52.~~ **Hunt Area 44-2.** All of Units 44, 45, and 52. (3-10-06)T

~~4853.~~ **Hunt Area 45.** All of Units 45 and 52. (3-30-01)

~~4954.~~ **Hunt Area 48-1.** All of Unit 48. (3-30-01)

~~505.~~ **Hunt Area 48-2.** That portion of Unit 48 north Trail Creek and the Ketchum-Warm Springs Creek-Dollarhide Summit Road. (3-30-01)

~~516.~~ **Hunt Area 48-3.** That portion of Unit 48 south of the Ketchum-Warm Springs Creek-Dollarhide Summit Road. (3-30-01)

~~57.~~ **Hunt Area 48-4.** That portion of Unit 48 south and east of the following boundary: Beginning at the junction of the Deer Creek Road and State Highway 75, then west on the Deer Creek Road (Forest Service Road 097) to the Deer Creek Trail (Forest Service Trail 168), then west on the Deer Creek Trail to the Curran Creek Trail (Forest Service Trail 160), then southwest on the Curran Creek Trail to the Unit 44/48 boundary, and that portion of Unit 44 east of Willow Creek and south and east of Little Beaver Creek and Princess Mine Road. (3-10-06)T

~~528.~~ **Hunt Area 49.** All of Unit 49 ~~and that portion of Unit 50 in the Copper Creek and Cottonwood Creek drainages west of the Craters of the Moon National Monument. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting.~~ ~~(3-15-02)~~(3-10-06)T

~~539.~~ **Hunt Area 50-1.** That portion of Unit 50 south of the Doublespring Pass Road east of U.S. Highway 93, and that portion south of the Trail Creek Road west of U.S. Highway 93 ~~but EXCLUDING the Copper Creek and Cottonwood Creek drainages west of the Craters of the Moon National Monument. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting.~~ ~~(3-15-02)~~(3-10-06)T

~~5460.~~ **Hunt Area 50-2.** That portion of Unit 50 ~~west of U.S. 93 but EXCLUDING the North Fork and East Fork of the Big Lost River drainages, and the Copper Creek and Cottonwood Creek drainages west of the Craters of the Moon National Monument. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho~~

strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting south of the Doublespring Pass Road east of U.S. Highway 93, and that portion south of the Trail Creek Road west of U.S. Highway 93 EXCLUDING the East Fork of the Big Lost River drainages and EXCLUDING south of the Antelope/Fish Creek Road. (3-15-02)(3-10-06)T

~~5561.~~ **Hunt Area 50-3.** That portion of Unit 50 *east of U.S. Highway 93* south of the Antelope/Fish Creek Road. (3-15-02)(3-10-06)T

~~562.~~ **Hunt Area 51-1.** All of Unit 51 *including that portion of this hunt within one-half (1/2) mile inside the north and west boundary of the Idaho National Engineering and Environmental Laboratory (INEEL) adjacent to agricultural lands.* (3-30-01)(3-10-06)T

~~57.~~ **Hunt Area 51-2.** *That portion of Unit 51 south of Wet Creek Pass Creek Road and Bell Mountain Creek, and that portion of Unit 58 south of and including Kyle Canyon drainages north and west of State Highway 22, including all the Idaho Engineering and Environmental Laboratory (INEEL) lands in Units 51 and 58 within the described boundary.* (3-15-02)

~~58.~~ **Hunt Area 51-3.** *That portion of Unit 51 south of Wet Creek Pass Creek Road and Bell Mountain Creek, and within one (1) mile of private fields on which cultivated crops are currently growing, and that portion of Unit 58 south of and including the Kyle Canyon drainage north and west of State Highway 22, including all the Idaho National Engineering and Environmental Laboratory (INEEL) lands in Units 51 and 58 within the described boundary.* (3-15-02)

~~5963.~~ **Hunt Area 52A.** All of Units 52A and 68. (Caution: See Craters of the Moon closure.) (3-15-02)(3-10-06)T

~~64.~~ **Hunt Area 54-1.** All of Units 46, 47, 54, 55, and 57 and that portion of Unit 41 east of the West Fork Bruneau River. (3-10-06)T

~~65.~~ **Hunt Area 54-2.** Private land within Units 46, 47, 54, 55, and 57 and private land within that portion of Unit 41 east of the West Fork Bruneau River. (3-10-06)T

~~60.~~ **Hunt Area 56-1.** *All of Units 56, 70, 71, 72, 73, 73A and 74.* (3-30-01)

~~616.~~ **Hunt Area 56-2.** All of Unit 56. (3-30-01)(3-10-06)T

~~627.~~ **Hunt Area 58-1.** All of Unit 58, 59, and 59A. (7-1-99)

~~638.~~ **Hunt Area 58-2.** All of Unit 58. (7-1-99)

~~649.~~ **Hunt Area 59.** All of Units 59 and 59A. (7-1-99)

~~70.~~ **Hunt Area 60.** All of Units 60, 60A, 61, and 62A. (3-10-06)T

~~6571.~~ **Hunt Area 60-1.** All of Units 60, 61, and 62A, *EXCEPT the Harriman State Park Wildlife Refuge is CLOSED.* (7-1-99)(3-10-06)T

~~6672.~~ **Hunt Area 60-2.** All of Units 60, *EXCEPT the Harriman State Park Wildlife Refuge is CLOSED and 60A.* (3-30-01)(3-10-06)T

~~67.~~ **Hunt Area 60A.** *That portion of Unit 60A south of the Dubois-Kilgore Road and west of the Parker-Salem Road (Red Road).* (3-30-01)

~~6873.~~ **Hunt Area 61.** All of Unit 61. (3-30-01)

~~6974.~~ **Hunt Area 62.** That portion of Unit 62 east of the following described boundary: beginning at the junction of State Highway 33 and State Highway 32, then north on State Highway 32 to Lamont, then north on 4700 East approximately five miles to 1100 North, then west on 1100 North approximately two (2) miles to 4500 East, then north on 4500 East to Robinson Creek and that portion of Unit 65 east State Highway 33 within the National Forest boundary and that portion of Unit 65 east of State Highway 33. (3-30-01)(3-10-06)T

~~70.~~ **Hunt Area 62A-1.** That portion of Unit 62A west of the Henrys Fork of the Snake River and that portion of Unit 60 south of the Microwave Tower Road and east of the powerline to its intersection with Ashton Reservoir. (7-1-99)

~~71.~~ **Hunt Area 62A-2.** That portion of Unit 62A east of the Henrys Fork of the Snake River. All of Unit 62A. (7-1-99)(3-10-06)T

~~72.~~ **Hunt Area 64X.** All of Units 64 and that portion of Unit 65 west of Highway 33 66 and 69. (3-30-01)(3-10-06)T

~~73.~~ **Hunt Area 66A.** All of Units 66A and 76. (3-30-01)

~~74.~~ **Hunt Area 66A-1.** All of Unit 66A. (3-10-06)T

~~75.~~ **Hunt Area 67.** That portion of Unit 67 south and east of Dry Creek and south and west of Fleming Canyon. (3-15-02)

~~76.~~ **Hunt Area 69.** That portion of Unit 69 south and west of the Gray's Lake Long Valley Bone-Iona Road. (4-5-00)

~~77.~~ **Hunt Area 70.** All of Units 70, 71, 72, 73, 73A, and 74. (3-30-01)

~~78.~~ **Hunt Area 73X.** That portion of Unit 73 east of Interstate Highway 15, south of Two-mile Canyon-Skyline-Dry Canyon Road (Forest Service Road 053), and south and east of State Highway 36 to the Utah border. (3-15-02)(3-10-06)T

~~79.~~ **Hunt Area 74X.** Those portions of Units 74 and 75 within the following: Beginning at the junction of Highway 34 and Central Road, west on Central Road to Mountain Road, south on Mountain Road to Gentile Road, south on Gentile Road to River Road, south on River Road to Thatcher Road, east on Thatcher Road to Highway 34, south on Highway 34 to Main Canyon Road (USFS Road 440) to the USFS boundary, north along the USFS boundary to King Canyon Road (USFS Road 183), west on King Canyon Road to the Harwood Road, south on Harwood Road to Burton Road, west on Burton Road to Highway 34 to the point of beginning. (3-10-06)T

~~80.~~ **Hunt Area 75.** All of Units 75, 77, and 78. (3-30-01)

~~81.~~ **Hunt Area 76-1.** That portion of Unit 66A within the Miller and Newswander Creek drainages, the Jackknife Creek drainage east of the mouth of Squaw Creek, and east of the Cabin Creek-Haderlie Ridge Trail (Forest Service Trail 619), and that portion of Unit 76 within the following boundary: Beginning at the intersection of State Highway 34 and the Idaho-Wyoming border, then west approximately four (4) miles to the mouth of the South Fork of Tincup Creek and Forest Service Trail 014, then south up Trail 014 to the Stump Creek Road, then south and east along Stump Creek Road to the Idaho-Wyoming border, then north along the border to the junction of State Highway 34, the point of beginning All of Unit 76. (3-15-02)(3-10-06)T

~~82.~~ **Hunt Area 76-2 66A.** That portion of unit 76 south of the Georgetown-Wells Canyon-Crow Creek Roads 66A within the Miller and Newswander Creek drainages, the Jackknife Creek drainage east of the mouth of Squaw Creek, and east of the Cabin Creek-Haderlie Ridge Trail (Forest Service Trail 619), and the following portions of Unit 76: the drainage of Salt River east and south of the South Fork of Tincup Creek, and the drainage of the Thomas Fork of the Bear River north of State Highway 89 to the Idaho-Wyoming border. (3-15-02)(3-10-06)T

~~83.~~ **Hunt Area 76-3X.** Private lands and adjacent National Forest lands within one-half (1/2) mile of the eastern boundary of National Forest within the following: Unit 66A south of Miller Creek, and Unit 76 north and

east of the junction of Sage Creek and Crow Creek Road to the Idaho-Wyoming border. (3-10-06)T

86. Hunt Area 76-4X. That portion of Unit 76 east of U.S. Highway 30 and south of the Georgetown Canyon Road and west of the Caribou National Forest boundary, and the area south of U.S. Highway 89 and north of U.S. Highway 30 between Montpelier. (3-10-06)T

87. Hunt Area 77X. That portion of Unit 77 east of U.S. Highway 91, south of the Cub Creek Road, and west of the Cache National Forest boundary to the Utah border. (3-10-06)T

(BREAK IN CONTINUITY OF SECTIONS)

703. CONTROLLED HUNT AREA DESCRIPTIONS -- ANTELOPE.

01. Hunt Area 29. ~~That portion of Unit 29 downstream from and including the Hayden Creek drainage on the west side of the Lemhi River and those drainages on the east side of the main Salmon River upstream from the mouth of the Lemhi River to, but excluding, the Poison Creek drainage~~ All of Unit 29 except the Poison Creek drainage. ~~(3-30-01)~~(3-10-06)T

02. Hunt Area 30. All of Unit 30 and that portion of Unit 21A south and east of Carmen Creek Road. ~~(7-1-98)~~(3-10-06)T

03. Hunt Area 30A. All of Unit 30A. (7-1-98)

04. Hunt Area 32. All of Units 32 and 32A (3-30-01)

05. Hunt Area 36B. All of Unit 36B, and that portion of Unit 28 upstream from and including the Iron Creek drainage. (3-15-02)

06. Hunt Area 37-1. ~~That portion of Unit 37 south of the Doublespring Pass-Goldburg Road~~ All of Unit 37 and 37A, and that part of Unit 29 in the Poison Creek drainage. ~~(7-1-99)~~(3-10-06)T

~~**07. Hunt Area 37-2.** That portion of Unit 37 north of the Doublespring Pass-Goldburg Road. (7-1-99)~~

~~**08. Hunt Area 37A.** That portion of Unit 37A east of the (Little) Morgan Creek Road and the north fork of (Little) Morgan Creek. (3-30-01)~~

~~**09. Hunt Area 39.** All of Unit 39 That portion of Unit 39 south and east of Highway 21. ~~(3-20-97)~~(3-10-06)T~~

~~**10. Hunt Area 40.** All of Unit 40. (10-26-94)~~

~~**11. Hunt Area 41.** That portion of Unit 41 east of State Highway 51. (10-26-94)~~

~~**12. Hunt Area 42.** That portion of Unit 41 west of State Highway 51 and all of Unit 42. (10-26-94)~~

~~**13. Hunt Area 44.** All of Unit 44 and that portion of Unit 45 within the Camas Creek drainage. (10-26-94)~~

~~**14. Hunt Area 45-1.** All of Unit 45 ~~except~~ EXCLUDING that portion within the Camas Creek drainage. ~~(3-15-02)~~(3-10-06)T~~

~~**15. Hunt Area 45-2.** Private land within Unit 45 EXCLUDING that portion within the Camas Creek drainage. (3-10-06)T~~

- ~~154.~~ **Hunt Area 46-1.** All of Unit 46. (~~3-30-01~~)(3-10-06)T
- 15.** **Hunt Area 46-2.** Private land within Units 46 and 54 and private land within that portion of Unit 47 east of Salmon Falls Creek. (3-10-06)T
- 16.** **Hunt Area 47.** All of Unit 47. (10-26-94)
- 17.** **Hunt Area 49.** All of Unit 49 ~~and that portion of Unit 50 in the Copper Creek and Cottonwood Creek drainages west of the Craters of the Moon National Monument. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting.~~ (3-15-02)(3-10-06)T
- 18.** **Hunt Area 50-1.** That portion All of Unit 50 north of Antelope Creek and west of U.S. 93. (See Craters of the Moon closure.) (10-26-94)(3-10-06)T
- ~~19.~~ **Hunt Area 50-2.** That portion of Unit 50 southeast of Antelope and Pass Creeks but EXCLUDING the Copper Creek and Cottonwood Creek drainages west of Craters of the Moon National Monument. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting. (3-15-02)
- 20.** **Hunt Area 50-3.** That portion of Unit 50 north of Pass Creek and east of U.S. 93. (10-26-94)
- ~~219.~~ **Hunt Area 51-1.** That portion All of Unit 51 north of Badger Creek Road and north of the Wet Creek Pass Creek Road and that portion of Unit 63 within Butte County. (10-26-94)(3-10-06)T
- ~~22.~~ **Hunt Area 51-2.** That portion of Unit 51 south of Badger Creek Road and south of the Wet Creek Pass Creek Road and that portion of Unit 63 within Butte County including that portion of this hunt area within one-half (1/2) mile inside the boundary of the Idaho National Engineering and Environmental Laboratory (INEEL) adjacent to agricultural lands. (3-30-01)
- 230.** **Hunt Area 52.** All of Units 48 and 52. (3-15-02)(3-10-06)T
- 241.** **Hunt Area 52A.** All of Units 52A and 53. (See Craters of the Moon closure.) (3-15-02)(3-10-06)T
- ~~252.~~ **Hunt Area 54.** All of Unit 54. (3-13-96)
- ~~26.~~ **Hunt Area 57.** All of Unit 57 and that portion of Unit 56 west of Interstate 84. (3-27-97)
- ~~273.~~ **Hunt Area 58.** All of Unit 58 ~~outside the Idaho National Engineering and Environmental Laboratory (INEEL) boundary.~~ (7-1-99)(3-10-06)T
- 284.** **Hunt Area 59.** All of Units 59 and 59A. (3-20-96)
- ~~295.~~ **Hunt Area 60A.** All of Units 60 and 60A, and that portion of Unit 61 west of Hotel Creek. (3-20-96)
- ~~3026.~~ **Hunt Area 61.** That portion of Unit 61 east of Hotel Creek. (10-26-94)
- ~~3127.~~ **Hunt Area 63-1.** That portion of Unit 63 south of State Highway 33 ~~and including that portion of~~

~~this hunt area within one half (1/2) mile inside the east boundary of the Idaho National Engineering and Environmental Laboratory (INEEL) and which is adjacent to agricultural lands.~~ (7-1-99)(3-10-06)T

~~328.~~ **Hunt Area 63-2.** That portion of Unit 63 north of State Highway 33, ~~and including that portion of this hunt area within one half (1/2) mile inside the boundary of the Idaho National Engineering and Environmental Laboratory (INEEL) and which is adjacent to agricultural lands,~~ EXCLUDING the Camas National Wildlife Refuge which is CLOSED. (7-1-99)(3-10-06)T

~~329.~~ **Hunt Area 68.** All of Unit 68. (10-26-94)

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. 13-0108-0602P

NOTICE OF 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 2006 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 hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 22, 2006.

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 36-104(b) and 36-1101, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Require the wearing of hunter orange when hunting on Wildlife Management Areas where pheasants are stocked to address safety issues

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 hunters.

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 comply with printing schedules for the 2006 hunting seasons, and the lack of an identifiable group to represent the different hunting interest groups.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Kemner (208) 287-2748.

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 25, 2006.

DATED this 21st day of August, 2006.

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) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-0601

300. UPLAND GAME BIRD METHODS OF TAKE.

01. Taking of Upland Game Birds. No person shall take upland game birds: (7-1-93)

a. Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Pheasants shall not be taken before twelve o'clock noon on the opening day in certain counties (see Rule 11, Pheasant Seasons). Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. Pheasants shall not be taken before 10 a.m. after the opening day on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas. (4-6-05)

b. With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)

c. From boats or other craft having a motor attached UNLESS the motor is completely shut off and forward progress has ceased, or if the boat is drifting naturally, or if it is propelled only by paddle, oars, or pole, or if it is beached, moored, or resting at anchor. (7-1-93)

d. By the use or aid of any electronic call. (7-1-93)

e. By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)

f. When hunting on Wildlife Management Areas where pheasants are stocked without wearing hunter orange. (5-22-06)T

02. Wild Turkey. In addition to the methods listed above, wild turkey may not be taken: (7-1-93)

a. With lead shot exceeding BB size. (7-1-93)

b. With steel shot exceeding T size. (7-1-93)

c. By the use of dogs, except during fall hunts. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0602P

NOTICE OF 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 2006 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 hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0603P

NOTICE OF 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 2006-2007 Upland Game Bird Seasons establishing seasons and limits for upland game bird hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 PM
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 21, 2005.

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 36-104(b) and 36-901, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Bi-annual rule review to address biological issues and angler desires, and to make the rules easier to understand.

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 anglers.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2006-2007 fishing seasons, and the lack of an identifiable group to represent the various angler interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Fred Partridge (208) 287-2773.

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 25, 2006.

DATED this 21st day of August, 2006.

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) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0111-0601

004. DEFINITIONS.

For the purposes of this chapter, the following terms will be defined as follows: (3-20-97)

01. Artificial Fly. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-20-97)

02. Artificial Lure. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. No bait of any kind may be used with artificial lures when fishing artificial flies and lures-only waters. (3-20-97)

03. Bag Limit. The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. The bag and possession limits are equal except for salmon and steelhead. (3-20-97)

04. Bait. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) (See: Subsection 004.20 - NO BAIT.) (3-20-97)

05. Barbless Hook. A fish hook without barbs or on which barbs have been bent completely closed. (3-20-97)

06. Catch-and-Release. ~~A fishing restriction applied to a body of water requiring that all game fish, except whitefish and brook trout, must be released immediately, unharmed, back to the water. Only artificial flies or lures with one (1) barbless hook may be used in waters designated catch-and-release; bait is prohibited. It is permissible to use up to five (5) flies or lures, each with only one (1) barbless hook, per line. Whitefish and brook trout landed from catch-and-release waters may be retained in possession. Effort, by permitted methods, to catch or attempt to catch a fish or species of fish is lawful, with the restriction that any fish so caught must be released immediately, unharmed, back to the water. NOTE: Species of fish not specifically listed as catch-and-release may be harvested under their appropriate limits.~~ (3-20-97)(11-21-05)T

07. Closed to Harvest. ~~Effort, by permitted methods, to catch or attempt to catch a fish or group of fish is lawful, with the restriction that any fish or group of fish so caught must be released immediately back to the water.~~ (3-20-97)

087. Confluence of a Stream or River. The point where two (2) rivers or streams come together. (3-20-97)

098. Electric Motors Only. When fishing waters listed "electric motors only", gas (internal combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (3-20-97)

109. Fishing. Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (3-20-97)

110. Float Tube. A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (4-6-05)

121. Fly Fishing. Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-20-97)

132. Game Fish. Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; Chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (4-6-05)

- ~~143.~~ **Harvest.** Reduce a fish to possession. (3-20-97)
- ~~154.~~ **Hook.** A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (3-20-97)
- ~~165.~~ **Ice Fishing.** Fishing through an opening broken or cut through the ice. (3-20-97)
- ~~176.~~ **Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (3-20-97)
- ~~187.~~ **Motor.** Includes electric and internal combustion motors. (See Subsection 004.09 - Electric Motors Only.) (3-20-97)
- ~~198.~~ **Mouth of River or Stream.** The place where a river or stream enters a larger body of water. (3-20-97)
- ~~2019.~~ **No Bait.** Requires the use of artificial flies or lures, with one (1) barbless hook ONLY per fly or lure. (3-20-97)
- ~~240.~~ **No Motors.** Fishing from a boat with a motor attached is prohibited. (3-20-97)
- ~~221.~~ **Possession Limit.** Maximum number of fish that may be lawfully in possession of any person. "Possession limit" shall apply to fish while in the field or being transported to the final place of consumption or storage. (3-20-97)
- ~~232.~~ **Reservoir.** The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-20-97)
- ~~243.~~ **Season Limit.** The maximum number of fish that may be lawfully taken in any declared season. (3-20-97)
- ~~254.~~ **Snagging.** Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. Game fish which are hooked other than in the jaw or mouth must be released immediately. (4-6-05)
- ~~265.~~ **Steelhead.** Rainbow trout longer than twenty (20) inches in length in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage (excluding lakes and the Lemhi and the Pahsimeroi rivers), and the Clearwater River drainage (excluding that portion above Dworshak Dam, and lakes). Rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam, and in the Payette River from its mouth upstream to Black Canyon Dam during steelhead seasons. (4-6-05)
- ~~276.~~ **Tributary.** A stream flowing into a larger stream or lake. (3-20-97)
- ~~287.~~ **Trout.** Includes the following trout family fishes: ~~brook~~, brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow, splake, Sunapee; trout hybrids; and the landlocked forms of Chinook, coho, Atlantic and kokanee (blueback) salmon. (~~4-6-05~~)(11-21-05)T
- ~~298.~~ **Unattended Line.** A line not under the immediate surveillance by the angler. (3-20-97)
- ~~3029.~~ **Unprotected Nongame Fish.** All fish species other than game fish and protected ~~species of special concern~~ nongame fish. (~~3-20-97~~)(11-21-05)T

(BREAK IN CONTINUITY OF SECTIONS)

201. FISHING METHODS AND GEAR.

Unless modified by a regional exception, the following fishing methods and restrictions are applicable in all Idaho waters. (3-20-97)

01. Archery and Spear Fishing. Fishing with the use of bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of bullfrogs and unprotected nongame fish, and only in those waters during the season set for the taking of game fish. (7-1-99)

02. Bait Restricted. It is unlawful to fish with bait in waters designated as artificial flies and lures only, fly fishing only, or no bait, ~~or catch-and-release.~~ (~~3-20-97~~)(11-21-06)T

03. Barbed Hooks. It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. It is unlawful to fish in ~~artificial flies and lures only waters, or catch-and-release no bait~~ waters with barbed hooks. (~~3-20-97~~)(11-21-06)T

04. Fishing Gear. It is unlawful to fish in any waters of Idaho with more than one (1) handline or pole with a line attached, except a person with a two (2) pole validation may use two (2) poles; or with more than five (5) lines while ice fishing; or by archery, spearfishing, snagging, hands, and netting except as permitted. Not more than five (5) hooks may be attached per line. The line or lines must be attended by the person fishing. (4-6-05)

05. Fishing Shelters. Any enclosure or shelter which is left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address legibly marked on two (2) opposing sides of the enclosure or shelter. (7-1-99)

06. Gaff Hook. It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species. (3-20-97)

07. Molesting Fish. It is unlawful to molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (3-20-97)

08. Snagging. It is unlawful to snag game fish, unless otherwise stated by Commission rules/exceptions. Snagging of unprotected nongame fish species is permitted. (3-20-97)

09. Trapping and Seining Minnows or Crayfish. It is lawful to take the young of unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, provided the seine or net does not exceed four (4) feet in length or width, and the minnow or crayfish trap does not exceed eighteen (18) inches in length or twelve (12) inches in diameter or width. If the trap is of irregular dimension, but its volume does not exceed the volume of an eighteen by twelve by twelve inches (18"x12"x12") trap, it is also lawful to use. All fish so taken must immediately be killed except where stated otherwise. All traps must have a tag attached bearing the owner's name and address. Minnows and crayfish may only be taken during the season set for the taking of game fish in those waters. (3-20-97)

10. Use of Bait. It is unlawful to use live fish as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished. (3-20-97)

11. Use of Hands. It is lawful to take bull frogs and crayfish with the hands. (3-20-97)

202. BAG AND POSSESSION LIMITS.

01. Bag Limit. Maximum number of fish that may be lawfully taken by one (1) person in one (1) day. The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead. (3-20-97)

02. Possession Limit. Maximum number of fish that may be lawfully in possession of any one (1) person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish. (3-20-97)

03. Transport or Gift. No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. However, no person may claim ownership of more fish than allowed by the possession limit. (7-1-99)

04. Table on Bag and Possession Limits for Specified Fish.

| SPECIES | BAG AND POSSESSION LIMITS | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| BASS - Largemouth and Smallmouth | 6 | In the aggregate of both species, NONE under 12 inches. |
| BROOK TROUT | 25 | |
| BULL TROUT (Dolly Varden) | NONE | There is no harvest season for bull trout. Any bull trout caught may not be removed from the water and must be released immediately. |
| BURBOT (Ling) | NONE | There is no harvest season for burbot. Any burbot caught may not be removed from the water and must be released immediately. |
| NORTHERN PIKE | 6 | |
| SALMON (Anadromous) | | See Rules 500 to 599 |
| STEELHEAD | | See Rules 400 to 499 |
| STURGEON | NONE | There is no harvest season for sturgeon. Any sturgeon caught may not be removed from the water and must be released immediately. Barbless hooks required. |
| TIGER MUSKIE | 2 | NONE under 40 inches. |
| TROUT - includes the following trout family fishes brook, brown, cutthroat, golden, grayling, lake, (Mackinaw), rainbow, splake, sunapee; trout hybrids; and the landlocked forms of chinook, coho, Atlantic and kokanee (blueback) salmon. | 6 | In the aggregate of all species (see Magic Valley Southeast, Upper Snake regions for special cutthroat trout restrictions). |
| WALLEYE and SAUGER | 6 No Limit | <i>In the aggregate of both species.</i> SEE MAGIC VALLEY and SOUTHEAST REGIONAL EXCEPTIONS |
| WHITEFISH | 25 | |
| NONGAME SPECIES OF SPECIAL CONCERN PROTECTED NONGAME FISH - Shoshone, Wood River and Bear Lake sculpin, sand-roller, leatherside chub, Pacific lamprey. | NONE | May not be taken or possessed. |
| All Species other than those listed above. | NO LIMIT | |

(4-6-05)(11-21-06)T

05. Family Fishing Waters. Waters designated as Family Fishing Waters shall have a year round season: a general bag limit ~~for~~ of six (6) trout, of six (6) bass, ~~walleye and pike~~; no length limits; and allow the use of standard fishing gear. Pursuant to Section 36-105(3), Idaho Code, the Commission sets seasons and regional exceptions, including designated Family Fishing Waters, by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)(11-21-06)T

06. Special Limits. No person shall fish in any waters while having fish in possession in excess of the limits for those waters. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

403. PERMIT VALIDATION.

When a steelhead trout has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately do the following: (3-20-97)

01. Permit. Completely remove one (1) numbered notch from the permit. (3-20-97)

02. Number Code. Look up the number code from the location code list and write it in the space provided.

| RIVER LOCATION CODES | |
|-------------------------------------------------------------------------------|----|
| SNAKE RIVER | |
| Snake River, downstream from Salmon River | 01 |
| Snake River, upstream from Salmon River to <u>Hells Canyon Dam</u> | 02 |
| Snake River, Hells Canyon Dam to Oxbow Dam | 27 |
| CLEARWATER RIVER | |
| Clearwater River, downstream from Orofino Bridge | 03 |
| Clearwater River, upstream from Orofino Bridge | 04 |
| North Fork Clearwater River | 05 |
| South Fork Clearwater River | 07 |
| SALMON RIVER | |
| Salmon River, downstream from Whitebird Creek | 10 |
| Salmon River, Whitebird Creek to Little Salmon | 11 |
| Salmon River, Little Salmon to Vinegar Creek | 12 |
| Salmon River, Vinegar Creek to South Fork | 13 |
| Salmon River, South Fork to Middle Fork | 14 |
| Salmon River, Middle Fork to North Fork | 15 |
| Salmon River, North Fork to Lemhi River | 16 |
| Salmon River, Lemhi River to Pahsimeroi River | 17 |
| Salmon River, Pahsimeroi River to East Fork | 18 |

| RIVER LOCATION CODES | |
|-------------------------------------------|----|
| Salmon River, upstream from the East Fork | 19 |
| OTHER | |
| Little Salmon River | 20 |
| Panther Creek | 24 |
| Boise River | 28 |
| Payette River | 29 |

~~(4-6-05)~~(11-21-06)T

03. Date Entry. Enter the month and day the fish was caught.

(4-6-05)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0113-0601P

NOTICE OF 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 2006-2007 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 hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.13 - RULES GOVERNING THE TAKING OF AMERICAN CROW IN THE STATE OF IDAHO

DOCKET NO. 13-0113-0601P

NOTICE OF 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 2006-2007 Crow Seasons establishing seasons and limits for crow hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.14 - RULES GOVERNING FALCONRY IN THE STATE OF IDAHO

DOCKET NO. 13-0114-0601P

NOTICE OF 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 2006-2007 Falconry Seasons establishing seasons and limits for hunting with falcons in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-0601P

NOTICE OF 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 2006-2007 Furbearer and Trapping Seasons establishing seasons and limits for furbearer and unprotected wildlife hunting and trapping in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**November 1, 2006
7:00 p.m.
IDFG Clearwater Regional Office
3316 16th Street
Lewiston, Idaho 83501**

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.

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).

DATED this 21st day of August, 2006.

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) 334-2148

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.20 - RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS

DOCKET NO. 15-0120-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 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 Section 67-5003, 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 rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, page 102.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Sarah E. Scott, Program Operations Manager (208) 334-3833.

DATED this 23rd day of August, 2006.

Lois S. Bauer, Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
P. O. Box 83720
Boise, Idaho 83720-0007
Phone: (208) 334-3833; Fax: (208) 334-3033

DOCKET NO. 15-0120-0601 - ADOPTION OF PENDING RULE

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 06-8, August 2, 2006, page 102.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.08 - VITAL STATISTICS RULES

DOCKET NO. 16-0208-0601

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 39-242, 39-5403, and 39-269, Idaho Code; also the Idaho Administrative Procedure Act (APA), Title 67, 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 Wednesday, October 18, 2006.

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:

Vagueness in the law regarding who has the legal authority to request the removal of a body from where it is buried (disinterment) has resulted in confusion between family members as well as between legal agents and families over this matter. To remedy this situation, the Idaho Funeral Service Association introduced a bill (HB 646) in the 2006 legislature that clarified Idaho's disinterment law. The amended law now makes it clear that the person(s) who has the authority to determine the final arrangements for an individual's body at the time of death (Section 54-1142, Idaho Code) is the same person(s) who has the authority to authorize the removal of the body from where it is buried (Section 39-269, Idaho Code), thus eliminating a potential conflict between the two (2) statutes. The rule is being changed to align the Department's disinterment rules with the amended statute and make other minor clarifications as well.

Citations to the Department's "Use and Disclosure" rules were updated to correctly correspond to that chapter of rules, as last amended (2004). Updates were made to the sections at the very beginning and end of the rule to bring them into compliance with the requirements of the Idaho Administrative Procedure Act (APA).

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule changes are being made to align with legislation passed during the 2006 legislative session and with recent changes to other Department rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Greg Heitman at (208) 334-5986.

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 Wednesday, October 25, 2006.

DATED this 17th day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0208-0601

000. LEGAL AUTHORITY.

The *State* Idaho Board of Health and Welfare ~~promulgates rules governing the statewide system of vital records and statistics pursuant to~~ is authorized under Section 39-242, Idaho Code, to adopt rules that carry out the provisions of Title 39, Chapters ~~1, 2, and 54~~, Idaho Code, related to vital statistics. Under Section 39-5403, Idaho Code, the Board of Health and Welfare is authorized to promulgate rules for reporting and fees related to artificial insemination.
(12-31-91)()

001. TITLE.

These title of these rules ~~are to be cited as Idaho Department of Health and Welfare Rules;~~ is IDAPA 16.02.08, "Vital Statistics Rules."
(12-31-91)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."
()

004. INCORPORATION BY REFERENCE.

There are no incorporations by reference in this chapter of rules. ()

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records."
()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

0027. -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

200. TRANSMITTAL OF CERTIFICATES AND LOCAL RECORDS -- REPORTS.

01. **Transmittal of Certificates of Death and Stillbirth.** Certificates of death and stillbirth ~~shall~~ must be transmitted by the local registrar to the State Registrar of Vital Statistics within one (1) working day from the date they were received by the local registrar, except when certificates are to be used for expedited copies, in which case they ~~shall~~ must be transmitted to the State Registrar on the sixth working day from the date they were received by the local registrar. (11-20-87)(____)

02. **Expedited Certified Copies or Certificates of Death or Stillbirth.** No certified copies of certificates of death or stillbirth ~~shall~~ can be issued by a local deputy state registrar until the registrar is satisfied that the requesting person(s) has "direct and tangible interest" in the certificate as defined in ~~Idaho Department of Health and Welfare Rules~~, IDAPA 16.05.01, ~~Subsections 119.01, 119.02, and 119.03~~, "Rules Governing the Protection Use and Disclosure of Department Records," Subsections 011.01 and 011.03 and Section 283. (12-31-91)(____)

03. **Transmittal of Certificates of Birth.** All certificates of birth ~~shall~~ must be transmitted by the local registrar to the State Registrar of Vital Statistics within five (5) working days from the date they are received by the local registrar. (12-26-83)(____)

04. **Monthly Summary Report.** The local registrar must submit a written report at least once each calendar month on the birth, death, and stillbirth certificates filed with the local registrar. (12-26-83)

a. Form of Monthly Summary Report. The summary report must include, if applicable: (12-26-83)

i. A numerical listing of all original certificates of births, deaths, and stillbirths filed with the local registrar during the month for which the report is made; (12-26-83)

ii. Requests for supplies; (12-26-83)

iii. Violation reports; (12-26-83)

iv. Any other matter the State Registrar of Vital Statistics may request, in writing; and (12-26-83)

v. At a minimum, the fact that no birth, death, or stillbirth certificate was filed in a given month. (12-26-83)

b. Frequency of Reports. These reports must be sent to the Vital Statistics Unit by the fifteenth of the month succeeding the month of registration. (12-26-83)

c. Failure to Report. Failure of a local registrar to make a monthly report for any two (2) calendar months within a six (6) month period is grounds for immediate removal by the State Registrar. (12-26-83)

201. COMPLETION AND CORRECTION OF CERTIFICATES.

01. **Correction of Minor Errors on Certificates During the First Year.** Except as otherwise provided in these rules, correction of obvious errors or transposition of letters in words of common knowledge, may be made by the State Registrar or an authorized agent within the first year after the date of the event either upon individual observation or query or upon request of any person with a direct and tangible interest as defined in ~~Idaho Department of Health and Welfare Rules~~, IDAPA 16.05.01, ~~Subsection 119.02~~, "Rules Governing The Protection Use and Disclosure of Department Records," Subsections 011.01 and 011.03, or any person listed in Subsection 201.06.d. of these rules. The method of correction ~~shall~~ will be determined by the State Registrar, and ~~shall not be~~ is not subject to the requirements of Subsection 201.08 of these rules. When such minor corrections are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change ~~shall~~ must be made on the certificate in such a way as not to become a part of any certification issued. The certificate ~~shall~~ must not be marked as amended. (12-31-91)(____)

02. Amendment of Registrant's Given Names or Surname on Birth Certificates Within the First Year. (12-26-83)

a. Until the registrant's first birthday, given names or surname may be amended upon written notarized request of: (11-20-87)

- i. Both parents; (12-26-83)
- ii. The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)
- iii. The father in the case of the death or incapacity of the mother; (12-26-83)
- iv. The mother in the case of the death or incapacity of the father; or (12-26-83)
- v. The legal guardian or agency having legal custody of the registrant. (12-26-83)

b. The certificate ~~shall~~ must be marked as amended. (~~12-26-83~~)(____)

03. Amendment of Registrant's Given Name on Birth Certificate After the First Year. (12-26-83)

a. After one (1) year from the date of birth, the provisions of Subsection 201.06 of these rules must be followed to amend the given name if the name was entered in error at the time of the preparation of the birth certificate. (~~12-31-91~~)(____)

b. In all other cases, a legal change of name order from a court of competent jurisdiction must be submitted to change a given name after one (1) year. (12-26-83)

04. Addition of Given Names on Birth Certificates. (12-26-83)

a. Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon written notarized request of: (12-26-83)

- i. Both parents; (12-26-83)
- ii. The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)
- iii. The father in the case of the death or incapacity of the mother; (12-26-83)
- iv. The mother in the case of the death or incapacity of the father; or (12-26-83)
- v. The legal guardian or agency having legal custody of the registrant. (12-26-83)

b. The certificate shall be marked as amended. (12-26-83)

c. After the registrant's seventh birthday, the provisions of Subsection 201.06 of these rules must be followed to add a given name. (~~12-31-91~~)(____)

05. Acknowledgment of Paternity. (12-26-83)

a. Subject to the provisions of Subsection 201.05.b. ~~below~~ of these rules, a new certificate of birth ~~shall~~ will be prepared by the State Registrar for a child born out of wedlock in this state upon receipt of an affidavit of paternity signed by both parents and a written request by both parents. The child's surname ~~shall~~ will be changed on the certificate to that of the father if both parents so request. (~~12-26-83~~)(____)

b. If another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction, or following adoption. (12-26-83)

c. The certificate *shall* must not be marked as amended. (~~12-26-83~~)(____)

06. All Other Amendments. Unless otherwise provided in these rules or in Section 39-250, Idaho Code, all other amendments to vital records *shall* must be supported by: (~~1-10-86~~)(____)

a. An affidavit setting forth: (12-26-83)

i. Information to identify the certificate; (12-26-83)

ii. The incorrect data as it is listed on the certificate; and (~~12-26-83~~)(____)

iii. The correct data as it should appear. (12-26-83)

b. If one (1) year has elapsed since the date the event occurred, one (1) or more items of documentary evidence which support the alleged facts and which were established at least five (5) years prior to the date of application for amendment or within seven (7) years of the date of the event. (12-26-83)

c. Any item of a medical nature *shall* can be amended only upon receipt of an affidavit from the person certifying such item, except that queries originating in the vital statistics office and subsequently completed and signed by the certifier may be used to complete or modify the reported cause of death. The State Registrar may require documentary evidence to substantiate the requested amendment. (~~9-1-84~~)(____)

d. Applications to amend a specific vital record will be accepted as follows: (12-26-83)

i. An application to amend a birth certificate may only be made by one (1) or both of the parents, the legal guardian, the registrant if eighteen (18) years of age or older, or the individual responsible for filing the certificate. (12-26-83)

ii. An application to amend a death certificate may only be made by the informant, the next of kin, the funeral director or person acting as such who signed the death certificate, or the certifying physician or coroner. (12-26-83)

iii. An application to amend a stillbirth certificate may only be made by a person listed in Subsections 201.06.d.i. or 201.06.d.ii. ~~above~~ of these rules. (~~12-31-91~~)(____)

iv. An application to amend a marriage or divorce certificate may only be made by the custodian of the official record from which the certificate was prepared, either of the parties to the marriage or divorce, or the individual responsible for filing the certificate. (12-26-83)

e. The State Registrar *shall* will evaluate the evidence submitted in support of any amendment, or require additional documentation. The State Registrar's decision and determination *shall* will be based upon serving the objectives of the vital statistics statutes and the best interests of the public. In the event the application is rejected or additional information is required, the State Registrar *shall* must advise the applicant of the reason for the action and the right to appeal pursuant to Section 39-250(d), Idaho Code. (~~12-31-91~~)(____)

07. Amendment of the Same Item More Than Once. Once an item is amended on a vital record, that item *shall* can not be amended again except upon receipt of a court order from an Idaho court of competent jurisdiction. (~~12-26-83~~)(____)

08. Methods of Amending Certificates. (12-26-83)

a. Certificates of birth, death, stillbirth, marriage, and divorce may only be amended by the State

Registrar as follows:

(12-26-83)

i. Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires. The new certificate may be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these rules, the item number of the entry that was amended ~~shall~~ must be identified on the new certificate. In every case, except as provided elsewhere in these rules or the Idaho Code, the new certificate ~~shall~~ must show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate ~~shall~~ must be typed on the new certificate. ~~(12-26-83)()~~

ii. Completing the item in any case where the item was left blank on the existing certificate. (12-26-83)

iii. Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side. The line drawn through the original entry ~~shall~~ must not obliterate such entry. ~~(12-26-83)()~~

iv. A certificate of birth amended pursuant to in accordance with the provisions of Section 39-250(c), Idaho Code, ~~shall~~ must be amended as prescribed in Subsection 201.08.a.iii. ~~above~~ of these rules. The fact that the name was changed pursuant to in accordance with a court order ~~shall~~ must be stated on the certificate. ~~(12-31-91)()~~

b. Unless prohibited by statute or rule, there ~~shall~~ must be inserted on the face of the certificate the date the amendment was made and the initials of the person making the change; the certificate ~~shall~~ must be marked as amended. ~~(12-26-83)()~~

(BREAK IN CONTINUITY OF SECTIONS)

851. AUTHORIZATION FOR DISINTERMENT AND REINTERMENT.

01. ~~Authorization~~ Disinterment and Reinterment of a Dead Body or Fetus. A Upon receipt of a notarized application, or an order of a court of record of this state, the State Registrar will issue a permit for the disinterment and reinterment of a dead body or fetus ~~shall be issued by the State Registrar upon receipt of a notarized application/authorization signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of record of this state directing such disinterment, or upon notarized written application of any person authorized by Section 39-269, Idaho Code, to request a special disinterment permit for legal purposes. The permit will be issued only to the mortician who is identified on the application or order as the mortician in charge of the disinterment. The application for the permit must be signed by the applicant and the mortician in charge of the disinterment. The applicant for the permit must be either:~~ ~~(12-26-83)()~~

a. The person or persons who have the highest authority under the provisions of Section 54-1142, Idaho Code; or ()

b. A person authorized by Section 39-269, Idaho Code, to request a special disinterment for legal purposes, in which case the application must state facts showing that the ends of justice require disinterment. ()

02. Mass Disinterment and Reinterment. Upon receipt of a ~~court order, a signed and~~ notarized permission of the next of kin of all decedents, or a signed and notarized application for disinterment for legal purposes ~~application, or an order of a court of record of this state, the State Registrar may issue one (+) a single permit for the disinterment and reinterment of all remains included in a mass disinterment, provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified. The permit will be issued only to the mortician who is identified on the application or order as the mortician in charge of the disinterment. The application or order for the permit must identify the remains of each body to the extent possible and specify the place of disinterment and reinterment. The application for the permit must be signed by the applicant and the mortician in charge of the disinterment. The applicant for the permit must be either:~~ ~~(12-26-83)()~~

a. The person or persons who have the highest authority under the provisions of Section 54-1142, Idaho Code, for each of the deceased; or ()

b. A person authorized by Section 39-269, Idaho Code, to request a special disinterment for legal purposes, in which case the application must state facts showing that the ends of justice require disinterment. ()

03. Nature of Permit. The authorization issued in accordance with the statutes and ~~regulations~~ rules governing disinterment ~~shall be~~ is permission for disinterment, transportation and reinterment. (~~12-26-83~~)()

(BREAK IN CONTINUITY OF SECTIONS)

901. -- 9959. (RESERVED).

~~996. ADMINISTRATIVE PROVISIONS.~~

~~Contested case appeals shall be governed by Section 39-250 (d), Idaho Code, and Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases Proceedings and Declaratory Rulings".~~ (~~12-31-91~~)

~~997. CONFIDENTIALITY OF RECORDS.~~

~~The disclosure of vital records is governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".~~ (~~12-26-83~~)

~~998. INCLUSIVE GENDER AND NUMBER.~~

~~For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.~~ (~~12-31-91~~)

~~999. SEVERABILITY.~~

~~Idaho Department of Health and Welfare Rules, IDAPA 16.02.08, "Vital Statistics Rules," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ (~~12-26-83~~)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM

DOCKET NO. 16-0304-0601

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) 56-202, Idaho Code, and 7 CFR.

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 18, 2006.

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:

Families who apply for Food Stamps need reliable transportation in order to seek and maintain employment, to further their education, and to transport their children. Idaho's current policy of counting the value of a family's vehicle in determining their eligibility for Food Stamps often forces the family to sell their reliable vehicles in order to put food on the table to meet their most basic financial needs. Because of Idaho's restrictive rules those who are most hurt by the current rules are two-parent households, working adults, households suffering recent job loss, and those living in rural Idaho.

The proposed changes will exclude one vehicle per adult family member in the Food Stamp household. These changes will promote and support working families in Idaho, especially those families living in rural Idaho with limited access to public transportation.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. There may be a slight increase in the number of families approved for food stamps, but there will be no fiscal impact to the state general funds. The Food Stamp Program is 100% federally funded.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is providing a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rosie Andueza at (208) 334-5553.

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 25, 2006.

DATED this 22nd day of August, 2006.

Sherri Kovach
Program Supervisor
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 FOR DOCKET 16-0304-0601

334. VEHICLES.

Treat any vehicle that is used primarily for transportation and not for recreational use, as described in Subsections 334.01 and 334.02 of these rules. Vehicles include cars, trucks, vans, motorcycles, boats, snowmobiles, self-propelled motor homes, and aircraft. The average trade-in value in the most recently published NADA guide is the current market value of a vehicle. The value of any vehicle that is primarily for recreational use counts toward the household's resource limit. (1-1-95)()

01. Exclude One Vehicle Per Adult. The value of one (1) vehicle per adult in the Food Stamp household is excluded beginning with the highest valued vehicle. ()

02. All Other Vehicles Are Subject To Federal Regulations. All other vehicles in the household will have their values counted as provided in 7 CFR 273. ()

~~335. TOTALLY EXCLUDED LICENSED VEHICLES.~~

~~The Department determines if a vehicle is totally excluded as a resource. If a vehicle is totally excluded, the resource value is not counted against the household's resource limit. Totally excluded licensed vehicles are listed in Subsections 335.01 through 335.07.~~ (3-15-02)

~~**01. Licensed Vehicle Used to Produce Income.** The vehicle must produce annual income consistent with the vehicle's fair market value (FMV). The exclusion applies during temporary unemployment. Examples: Taxi, produce truck, or fishing boat. Licensed vehicles used in self-employed farming by a household member will continue to be excluded as a resource for one (1) year after the farming self-employment stops.~~ (3-15-02)

~~**02. Licensed Vehicle Used for Job-Related Long Distance Travel.** Used for job-related long distance travel by household member, ineligible legal non-citizen, or disqualified person. This does not include commuting to work or training. The exclusion applies during temporary unemployment.~~ (7-1-98)

~~**03. Licensed Vehicle Used as Client's Home.** The vehicle is used as the household's home.~~ (6-1-94)

~~**04. Licensed Vehicle Used to Transport a Disabled Household Member.** Needed to transport any physically disabled household member, physically disabled disqualified person whose resourcees are counted as available to the household, or physically disabled ineligible alien living in the household. The vehicle is excluded regardless of the purpose of the transportation. This exclusion is limited to one (1) vehicle per physically disabled person. The physical disability may be permanent or temporary. The disability must be verified.~~ (3-15-02)

~~**05. Licensed Vehicle Used to Travel from Job to Job.** Used by migrant farm worker to go from job to job.~~ (6-1-94)

~~**06. Vehicle Used to Carry Fuel or Water.** Used to carry the primary source of fuel for heating or water for home use during the certification period.~~ (7-1-98)

~~**07. Licensed Vehicles With No Significant Return.** Proceeds from the sale of the vehicle, minus loans, would be less than one thousand five hundred dollars (\$1,500).~~ (3-15-02)

~~336. VEHICLES COUNTED AS A RESOURCE.~~

~~Determine first if a vehicle is excluded, under Section 335 of these rules, from the equity value test for resources. If the vehicle is not excluded under Section 335, determine the resource value using Subsections 336.01 and 336.02. The resource value for licensed vehicles is determined differently than for unlicensed vehicles.~~ (3-15-02)

~~**01. Resource Value of Licensed Vehicles.** Count the resource value of licensed vehicles, if not excluded under Section 335 of these rules, as shown below:~~ (3-15-02)

~~**a.** Licensed vehicle per adult household member. Allow one (1) licensed vehicle per adult household member, or ineligible alien, or disqualified household member, whose resourcees are counted as available to the~~

~~household, regardless of use. Count the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) as a resource, regardless of debt. (3-15-02)~~

~~**b.** Licensed vehicle per household member under age eighteen (18), used to commute to work, education, or training, or to seek work. Allow one (1) licensed vehicle per household member, or ineligible alien, or disqualified household member under age eighteen (18), whose resources are counted as available to the household. The vehicle must be used to commute to work, training for work, or to seek work. Count the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) as a resource, regardless of debt. (3-15-02)~~

~~**e.** Other licensed vehicles. All other licensed vehicles. Count the greater of the client's equity, which is the fair market value minus loans, or the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) as a resource. (3-15-02)~~

~~**02.** Resource Value of Unlicensed Vehicles. Count the resource value of unlicensed vehicles, not excluded under Section 335 of these rules, as shown in Subsections 336.02.a. through 336.02.e.: (3-15-02)~~

~~**a.** Unlicensed vehicles with no significant return. If the proceeds from the sale of the unlicensed vehicle, minus loans, would be less than one thousand five hundred dollars (\$1,500) do not count any resource value. (3-15-02)~~

~~**b.** All other unlicensed vehicles. For all other unlicensed vehicles, working or not working, count the client's equity as a resource. (3-15-02)~~

~~**e.** Unlicensed vehicles on Indian reservation. Treat unlicensed vehicles, driven by tribal members on Indian reservations not requiring licensure as licensed vehicles. Determine the vehicles' resource value by their use. (3-15-02)~~

~~**337. COMPUTING VEHICLE FAIR MARKET VALUE.**~~

~~The Department will use an official used car valuations book, such as the NADA Official Used Car Guide, to compute the vehicle's fair market value. Do not add the value of low mileage or optional equipment. Do not add the value of special equipment for a handicapped person. If the household does not agree with the book value, it must provide proof of the vehicle's value from a reliable source such as a car dealer or a bank. (6-1-94)~~

~~**01.** Older Vehicles. If the vehicle is no longer listed in the NADA Official Used Car Guide, the Department will accept the household's estimate of the vehicle's value. If the Department has reason to question the estimate and if the value of the vehicle will affect eligibility, the household must get an appraisal from a car dealer or produce other evidence of its value. Accept a newspaper advertisement showing the selling price of similar vehicles. (6-1-94)~~

~~**02.** New Vehicles. If a new vehicle is not listed, get the fair market value by other means. The client may contact a dealer selling that type of vehicle. The dealer's wholesale value is the fair market value. For licensed antique, custom made, or classic vehicles, the household must provide proof of the value from a reliable source. (6-1-94)~~

~~**03.** Multiple Vehicles. If the household owns more than one (1) vehicle, assess each vehicle individually. Do not add the fair market value of two (2) or more vehicles to reach a total fair market value over four thousand six hundred fifty dollars (\$4,650). (7-1-97)~~

~~**335. -- 337. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

~~**339. UNLICENSED VEHICLES (RESERVED).**~~

~~Count the equity value, the fair market value minus the amount owed, of all unlicensed vehicles, whether or not they are operable. (6-1-94)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM

DOCKET NO. 16-0304-0602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rule are December 1, 2005 and October 1, 2006.

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 56-202, Idaho Code, and 7 CFR Parts 271 through 274.

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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to make the Food Stamp Program more cost effective and less error prone, the Department is amending the way income is calculated for individuals applying for food stamps. The federal government requires the state to exclude additional income for military personnel who are deployed to combat zones. These rules are being amended to remove obsolete wording, amend definitions, as well as aligning with federal requirements as follows:

- 1) Simplifying income calculations for self-employment and child support income.
- 2) Aligning work requirements and sanctions for non-compliance.
- 3) Excluding the additional military combat pay.
- 4) Amending definitions and removing obsolete wording.
- 5) Aligning time lines with federal requirements.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These rule changes are necessary for compliance with deadlines in governing law for this federal program, and confers a benefit.

FEE SUMMARY: 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 and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 25, 2006.

DATED this 22nd day of August, 2006.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0602

007. —~~008.~~ (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse or Misconduct."

(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

012. DEFINITIONS M THROUGH Z.

For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Migrant Farmworker Household. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

02. Minimum Utility Allowance (MUA). Utility deduction given to a food stamp household that has a cost for one (1) utility. (4-11-06)

03. Nonexempt. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

04. Nonprofit Meal Delivery Service. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

05. Overissuance. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

06. Parental Control. Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

07. Participant. A person who receives Food Stamp benefits. (4-6-05)

08. Program. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

09. Public Assistance. Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)

10. Recertification. A recertification is a process for determining ongoing eligibility for Food Stamps.

- (4-11-06)
- 11. Retail Food Store.** A retail food store, for Food Stamp purposes means: (6-1-94)
- a.** An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)
- b.** Public or private communal dining facilities and meal delivery services. (6-1-94)
- c.** Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)
- d.** Public or private nonprofit group living arrangements. (6-1-94)
- e.** Public or private nonprofit shelters for battered women and children. (6-1-94)
- f.** Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)
- g.** A farmers' market. (6-1-94)
- h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)
- 12. Sanction.** A penalty period when an individual is ineligible for Food Stamps. (10-1-06)T
- 123. Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)
- 134. Simplified Reporting Household (SR).** All households except those in which all members are elderly or disabled. (4-11-06)
- 145. Spouse.** Persons who are living together, married or free to marry, and are holding themselves out as man and wife. (4-6-05)
- 156. Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 167. State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)
- 178. State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 189. Student.** An individual between the ages of eighteen (18) and fifty (50), physically and mentally fit, and enrolled at least half-time in an institution of higher education. (6-1-94)
- 1920. Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or federally administered supplements. (4-11-06)
- 201. Systematic Alien Verification for Entitlements (SAVE).** The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (4-11-06)
- 212. Timely Notice.** Notice that is mailed at least ten (10) days before the effective date of an action taken by the Department. (4-6-05)
- 223. Twelve Month Contact.** For households that have a twenty-four (24) month certification period,

Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)

234. Tribal General Assistance. Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (4-11-06)

245. Verification. The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

256. Verified Upon Receipt. Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration, ~~the Idaho Department of Commerce and Labor for unemployment benefits~~, or Homeland Security query for citizenship status. ~~(4-11-06)~~(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

217. NONHOUSEHOLD MEMBERS.

Nonhousehold members are persons not counted in determining Food Stamp household size. Their income and resources do not count toward the Food Stamp household. Nonhousehold members may be eligible as a separate household. Nonhousehold members are listed below: (6-1-94)

01. Roomers. A person who pays for lodging, but not meals. (6-1-94)

02. Live-In Attendants. A person living with a household to provide medical, housekeeping, child care, or other similar services. (6-1-94)

03. Ineligible Students. A person between the ages of eighteen (18) and fifty (50), physically and mentally fit, enrolled at least half-time in an institution of higher education, and not meeting Food Stamp eligibility requirements for students. (6-1-94)

04. Residents of Institutions. A resident of an institution is not a member of the Food Stamp household. A ~~resident of an institution~~ is an ineligible household member because the institution provides the resident over fifty percent (50%) of three (3) meals daily, as part of the normal services. The institution is not allowed to accept ~~coupons~~ Food Stamps. ~~(6-1-94)~~(10-1-06)T

05. Persons Not Purchasing and Preparing Meals. A person sharing living quarters, but not purchasing and preparing meals with the household as standard practice. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

237. SANCTIONS FOR FAILURE TO COMPLY WITH JSAP WORK PROGRAM REQUIREMENTS.

When a JSAP participant fails or refuses to comply ~~with work program requirements~~ without good cause, sanctions listed in Subsections 237.01 ~~through and~~ 237.02 of these rules must be applied. In determining which sanction to impose, sanctions previously imposed for voluntary quit or reduction in work hours as described in Section 271 of these rules must be considered. ~~(4-5-00)~~(10-1-06)T

01. Noncomplying Household Member. The ~~noncomplying member~~ participant who commits the work program violation is excluded as a household member when determining the Food Stamp allotment. The person cannot ~~get~~ receive Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person ~~is not eligible for the greater of the sanction periods listed below or becomes exempt from~~

~~JSAP must serve a minimum sanction period plus take corrective action to become eligible for Food Stamps again. End the household's sanction, before the penalty period ends.~~ If the sanctioned household member becomes exempt from JSAP requirements, end the sanction. ~~(4-5-00)~~(10-1-06)T

a. ~~First failure to comply work program violation. The greater of the date the person corrects the sanction or one (1) month.~~ A minimum sanction period of one (1) month is imposed. ~~(7-1-99)~~(10-1-06)T

b. ~~Second failure to comply work program violation. The greater of the date the person corrects the sanction or three (3) months.~~ A minimum sanction period of three (3) months is imposed. ~~(7-1-99)~~(10-1-06)T

c. ~~Third failure to comply and subsequent failures work program violations. The greater of the date the person corrects the sanction or six (6) months.~~ A minimum sanction period of six (6) months is imposed. ~~(7-1-99)~~(10-1-06)T

02. Joins Another Household. If a sanctioned household member leaves the original household and joins another Food Stamp household, treat the sanctioned member as an excluded household member. The person cannot ~~get~~ receive Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is excluded for the rest of the sanction period, ~~or~~ and until ~~conditions for ending JSAP sanctions are met~~ corrective actions are taken. ~~(4-5-00)~~(10-1-06)T

03. Closure Reason. The household must be informed of the reason for the closure. (10-1-06)T

04. Sanction Notice. The household must be informed of the proposed sanction period. (10-1-06)T

05. Sanction Start. The household must be informed the sanction will begin the first month after timely notice. (10-1-06)T

06. Actions to End Sanction. The household must be informed of the actions the household can take to end the sanction. (10-1-06)T

07. Fair Hearing. The household must be informed of the right to a fair hearing. (10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

242. CORRECTIVE ACTION FOR WORK PROGRAMS.

A mandatory participant can requalify for Food Stamps after a sanction. The participant must contact the Department and request an opportunity to comply. The participant must show that failure to comply has ended. Before certifying failure to comply has ended, the Department may require the participant to attend an assigned activity for up to two (2) weeks, to show willingness to comply with ~~JSAP~~ work program requirements. ~~(7-1-98)~~(10-1-06)T

(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, 2002~~5~~ and ending November 30, 2005~~8~~. ~~(3-20-04)~~(12-1-05)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: (5-3-03)

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 his plan. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

271. PENALTY FOR RECIPIENT QUITTING A JOB OR REDUCING WORK HOURS.

If the Department determines a member of the household voluntarily quit a job or reduced work hours, the penalty listed in Subsection 271.01 of these rules must be imposed. Food Stamps must ~~end be reduced~~, beginning the first month after timely notice. The household must be told the information listed in Subsections 271.02 through 271.06 within ten (10) calendar days of the voluntary quit or reduction in work ruling. When determining the penalty sanction to impose, previous sanctions for noncompliance with JSAP and work registration requirements as described in Section 237 of these rules must be considered. Previous penalties sanctions for applicant recipient voluntary quit or work reduction must also be considered. If the sanctioned household member becomes exempt from JSAP requirements, end the sanction. The voluntary quit sanction does not end if the sanctioned household member becomes exempt due to application or receipt of Unemployment Insurance. ~~(3-15-02)~~(10-1-06)T

01. ~~Sanction-Period~~ Non-Complying Household Member. The member participant who quit or reduced work hours commits the work program violation is excluded as a household member when determining the Food Stamp allotment. The person cannot receive Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is not eligible for the greater of the penalty periods listed below or until he meets one (1) of the conditions to end the penalty must serve a minimum sanction period plus take corrective action to become eligible for Food Stamps again. Corrective action includes: returning to work, increasing work hours to meet the work exemption, or completing required activities with EWS. ~~(3-15-02)~~(10-1-06)T

a. First quit or reduction work program violation. The later in time the person returns to work or increases work hours or one (1) month. A minimum sanction period of one (1) month is imposed. ~~(3-15-02)~~(10-1-06)T

b. Second quit or reduction work program violation. The later in time the person returns to work or increases work hours or three (3) months. A minimum sanction period of three (3) months is imposed. ~~(3-15-02)~~(10-1-06)T

c. Third quit or reduction and subsequent quit or reduction work program violation. The later in time the person returns to work or increases work hours or six (6) months. A minimum sanction period of six (6) months is imposed. ~~(3-15-02)~~(10-1-06)T

02. Joins Another Household. If a sanctioned household member leaves the original household and joins another Food Stamp household, treat the sanctioned member as an excluded household member. The person cannot receive Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is excluded for the rest of the sanction and until corrective actions are taken. (10-1-06)T

023. Closure Reason. The household must be informed of the reason for the closure. (6-1-94)

034. Sanction Notice. The household must be informed of the proposed sanction period. (4-5-00)

045. Sanction Start. The household must be informed the sanction will begin the first month after timely notice. (6-1-94)

056. Actions to End Sanction. The household must be informed of the actions the household can take to end the sanction. (6-1-94)

067. Fair Hearing. The household must be informed of the right to a fair hearing. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

275. ENDING VOLUNTARY QUIT ~~OR REDUCTION OF~~ WORK HOURS PENALTY PROGRAM PENALTIES.

Eligibility may be reestablished before the end of the penalty period for an otherwise eligible household member when he meets the conditions in Subsection 275.01 of this rule. Eligibility may be reestablished after a voluntary quit or work reduction penalty period has elapsed for an otherwise eligible household member when he meets a condition in Subsection 275.02 of this rule. (~~5-3-03~~)(10-1-06)T

01. Ending Voluntary Quit or Reduction Penalty Before the End of the Penalty Period. If the ~~penalized~~ sanctioned household member becomes exempt from JSAP requirements, his eligibility for Food Stamps may be reestablished. The voluntary quit penalty does not end if the ~~penalized~~ sanctioned household member becomes exempt due to application or receipt of Unemployment Insurance. (~~5-3-03~~)(10-1-06)T

02. Ending Voluntary Quit or Reduction Penalty After Penalty Period. (5-3-03)

a. ~~Household member gets a job.~~ If the ~~penalized~~ sanctioned household member gets a new job comparable in salary or hours to the job he quit, his eligibility for Food Stamps may be reestablished. A comparable job may entail fewer hours or a lower net salary than the job which was quit. To be comparable, the hours for the new job cannot be less than thirty (30) hours per week and the salary or earnings for the new job cannot be less than Federal minimum wage multiplied by thirty (30) hours per week. (~~5-3-03~~)(10-1-06)T

b. ~~Household member increases hours to more than thirty (30) hours per week.~~ If the ~~penalized~~ sanctioned household member's hours of work are restored to ~~the average number of~~ more than thirty (30) hours per week before reduction, his eligibility for Food Stamps may be reestablished. (~~5-3-03~~)(10-1-06)T

c. A sanctioned household member can requalify for Food Stamps after serving the minimum sanction period and completing corrective action. The participant must contact the Department and request an opportunity to correct the sanction. The Department may require the participant to attend an assigned EWS activity for up to two (2) weeks to show his willingness to comply with work program requirements. (10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

323. LUMP SUM RESOURCES.

Nonrecurring lump sum payments are counted as a resource in the month received, unless excluded under these rules. A household using simplified reporting is not required to report changes in resources during a certification period. ~~The A household using change reporting~~ must report the lump sum payment to the Department within ten (10) days of receiving the payment, if their resource limit is exceeded because of the lump sum. If the lump sum along with other resources exceeds the resource limit, ~~the that change reporting~~ household is not eligible for Food Stamps. ~~If resources exceed the limit, the Department will end~~ The Food Stamps case must be closed after timely notice. The household may spend resources down under the limit in the month the lump sum was received. If ~~the resources is~~ are spent down below the resource limit, the household continues to be eligible for Food Stamps. The household must still report receipt of the lump sum payment within ten (10) days. Some lump sum payments are listed below:

~~(4-11-06)~~(10-1-06)T

- 01. Retroactive Payments.** Retroactive payments from: (6-1-94)
 - a.** Social Security. (6-1-94)
 - b.** SSI. (6-1-94)
 - c.** Public Assistance. (6-1-94)
 - d.** Railroad Retirement Benefits. (6-1-94)
 - e.** Unemployment Compensation Benefits. (6-1-94)
 - f.** Child Support. (10-1-06)T
- 02. Insurance.** Insurance settlements. (6-1-94)
- 03. Refunds.** Income tax refunds, rebates, or credits. (6-1-94)
- ~~04. **Earned Income Tax Credit (EITC).** Single earned income tax credit payments received at the end of the tax year.~~ ~~(6-1-94)~~
- 054. Property Payments.** Lump sum payment from sale of property. Contract payments from the sale of property are counted as income. (6-1-94)
- ~~065. Security Deposits.~~ Refunds of security deposits on rental property or utilities. (6-1-94)
- ~~076. Disability Pension.~~ Annual adjustment payments in VA disability pensions. (6-1-94)
- ~~087. Vacation Pay.~~ Vacation pay, withdrawn in one lump sum by a terminated employee. (6-1-94)
- ~~098. Military Bonus.~~ Military re-enlistment bonuses. (6-1-94)
- ~~109. Readjustment Pay.~~ Job Corps readjustment pay. (6-1-94)
- ~~110. Severance Pay.~~ Severance pay, paid in one (1) lump sum to a former employee. (6-1-94)
- ~~121. TAFI One-Time Cash Payment.~~ The one-time TAFI cash diversion payment. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

- 402. UNEARNED INCOME.** Unearned income includes, but is not limited to income listed below: (6-1-94)

- 01. Public Assistance (PA).** Payments from SSI, TAFI, AABD, GA, or other Public Assistance programs are unearned income. (7-1-98)
- 02. Retirement Income.** Payments from annuities, pensions, and retirement are unearned income. Old age, survivors, or Social Security benefits are unearned income. (6-1-94)
- 03. Strike Benefits.** Strike benefits are unearned income. (6-1-94)
- 04. Veteran's Benefits.** Veteran's benefits are unearned income. (6-1-94)
- 05. Disability Income.** Disability benefits are unearned income. (6-1-94)
- 06. Workers' Compensation.** Workers' Compensation is unearned income. (6-1-94)
- 07. Unemployment Insurance.** Unemployment Insurance is unearned income. (6-1-94)
- 08. Contributions.** Contributions are unearned income. (6-1-94)
- 09. Rental Property Income.** Rental property income, minus the cost of doing business, is unearned income if a household member is not managing the property at least twenty (20) hours per week. (6-1-94)
- 10. Support Payments.** Support payments, including child support payments, are unearned income. (6-1-94)
- 11. Alimony.** Alimony payments are unearned income. (6-1-94)
- 12. Education Benefits.** Educational scholarships, grants, fellowships, deferred payment loans, and veteran's educational benefits exceeding excluded amounts are unearned income. (6-1-94)
- 13. Government Sponsored Program Payments.** Payments from government sponsored programs are unearned income. (6-1-94)
- 14. Dividends, Interest, and Royalties.** Dividends, interest, and royalties are unearned income. (6-1-94)
- 15. Contract Income.** Contract income from the sale of property is counted as unearned income. (6-1-94)
- 16. Funds From Trusts.** Monies withdrawn from trusts exempt as a resource are unearned income. Dividends paid or dividends that could be paid from trusts exempt as a resource are unearned income. (7-1-97)
- 17. Recurring Lump Sum Payments.** Recurring lump sum payments are unearned income. (7-1-98)
- 18. Prizes.** Cash prizes, gifts and lottery winnings are unearned income. (6-1-94)
- 19. Diverted Support or Alimony.** Child support or alimony payments, diverted by the provider to a third party, to pay a household expense are unearned income. (6-1-94)
- ~~**20. HUD Payments for Utilities.** Housing and Urban Development (HUD) payments for utility costs, made directly to the household or jointly to the household and utility company, are unearned income. (6-1-94)~~
- 210. Agent Orange Payments.** Payments made under the Agent Orange Act of 1991 and disbursed by the U.S. Treasury are unearned income. (6-1-94)
- ~~**221. Garnishments.** Garnishments from unearned income are unearned income. (6-1-94)~~
- ~~**232. Tribal Gaming Income.** Tribal gaming income is unearned income. The participant can choose to~~

count the income in the month received, or prorate the income over a twelve (12) month period. (4-5-00)

243. Other Monetary Benefits. Any monetary benefit, not otherwise counted or excluded, is unearned income. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

406. INCOME EXCLUDED BY FEDERAL LAW.

Income listed in Section 406 is excluded by Federal law when computing Food Stamp eligibility: (3-15-02)

01. P.L. 91-646. Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)

02. P.L. 92-203. Funds from the Alaska Native Claims Settlement Act. (6-1-94)

03. P.L. 93-113 RSVP. Payments under Title I and Title II, "Retired Senior Volunteer Program" (RSVP), the Foster Grandparents Program and the Domestic Volunteer Services Act of 1973. (6-1-94)

04. P.L. 93-134 as Amended by P.L. 103-66. Effective January 1, 1994, up to two thousand dollars (\$2,000) per calendar year of payments derived from interest of individual Indians in trust or restricted lands. (6-1-94)

05. P.L. 93-288, P.L. 100-707 Disaster Relief. Payments from Disaster Relief and Emergency Assistance Disaster Relief Act. (6-1-94)

06. P.L. 93-531. Relocation assistance to Navajo and Hopi tribal members. (6-1-94)

07. P.L. 94-114. The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)

08. P.L. 94-189. Funds from the Sac and Fox Indian Claims Agreement. (6-1-94)

09. P.L. 94-540. Funds to the Grand River Band of Ottawa Indians. (6-1-94)

10. P.L. 95-433. Funds to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)

11. P.L. 96-420. Funds to the Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)

12. P.L. 105-220 WIA. All earned and unearned income received from the Workforce Investment Act (WIA) of 1998, except for earned income received from taking part in on-the-job training programs. (3-15-02)

13. P.L. 97-365 and P.L. 98-64. Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)

14. P.L. 97-403. Funds to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)

15. P.L. 97-408. Funds to the Blackfeet, Gros Ventre, and Assiniboine Tribes, Montana. Funds to the Papago Tribe, Arizona. (6-1-94)

16. P.L. 98-123. Funds to the Red Lake Band of Chippewa Indians. (6-1-94)

17. P.L. 98-500. Funds from the Old Age Assistance Claims Settlement Act, provided to heirs of

- deceased Indians, except for per capita shares over two thousand dollars (\$2,000). (6-1-94)
18. **P.L. 99-264.** Funds to the White Earth Band of Chippewa Indians, Minnesota. (6-1-94)
19. **P.L. 99-346.** Funds to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
20. **P.L. 100-175.** Effective October 1, 1987, payments received by persons age fifty-five (55) and older under Title V, "Senior Community Service Employment Program". (6-1-94)
21. **P.L. 100-435 WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
22. **P.L. 100-435 Section 403.** Payments or reimbursements for work related or child care expenses made under an employment, education, or training program under Title IV-A of the Social Security Act after September 19, 1988. ~~(6-1-94)~~(10-1-06)T
23. **P.L. 100-435 Section 404.** Payments made to a JSAP participant for work, training, or education-related expenses or for dependent care. ~~(6-1-94)~~(10-1-06)T
24. **P.L. 101-41.** Funds to the Puyallup Tribe of Indians, Washington. (6-1-94)
25. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida, and the Independent Seminole Indians of Florida. (6-1-94)
26. **P.L. 101-426.** Payments made under the Radiation Exposure Compensation Act. (6-1-94)
27. **P.L. 101-508.** At-risk child care payments. (6-1-94)
28. **P.L. 101-610 and P.L. 103-82.** Allowances, earnings and payments to persons participating in programs under the National and Community Services Act. The exclusion applies to all payments made under the AmeriCorps Program. (7-1-99)
29. **P.L. 102-237.** Amounts needed for attainment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act. (6-1-94)
30. **P.L. 102-325.** Educational income authorized under the BIA student assistance programs and under Title IV of the Higher Education Amendments of 1992. (6-1-94)
31. **P.L. 103-286.** Effective 08-01-94, payments made to victims of Nazi persecution. (1-1-95)
32. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
33. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
34. **Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Any other fund for the settlement of Agent Orange liability litigation. (6-1-94)
35. **Civil Liberties Act of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
36. **Negative Utility Allowance.** Negative utility payments from HUD and FmHA. (8-1-94)
37. **Energy Assistance.** Payments from Federal energy assistance, including insulation and weatherization payments. (7-1-98)

38. SSI Payments Under Zebley v. Sullivan Ruling. Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)

39. VISTA Payments. Payments under Title I, VISTA, University Year for Action and Urban Crime Prevention Program to volunteers who were receiving Food Stamps or public assistance when they joined the program. Payments to volunteers who were getting an income exclusion for a VISTA or other Title I allowance before the Food Stamp Act of 1977. Temporary breaks in participation do not alter the exclusion. (6-1-94)

40. Crime Act of 1984 as Amended by P.L. 103-322. Payments from a crime victim compensation program. (7-1-99)

41. Combat Pay, P.L. 108-447. Additional pay received by military personnel as a result of deployment to a combat zone. (10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

426. SELF-EMPLOYMENT INCOME.

Net self-employment income is computed by subtracting allowable business expenses from self-employment earnings. Actual, not rounded, figures are used. The Idaho Food Stamp Program recognizes two (2) types of self-employment businesses. (6-1-94)(10-1-06)T

01. Farming Self-Employment. The farmer must receive or expect to receive an annual gross income of one thousand dollars (\$1000) or more to be a self-employed farmer. (10-1-06)T

02. Non-Farming Self Employment. All other self-employment businesses (10-1-06)T

427. COMPUTING NON-FARMING SELF-EMPLOYMENT INCOME STANDARD DEDUCTION.

Net self-employment income for a non-farming business is computed by subtracting fifty percent (50%) from the gross income as an allowable standard deduction from non-farming self-employment earnings. (10-1-06)T

4278. WHEN NON-FARMING SELF-EMPLOYMENT INCOME MUST BE AVERAGED OVER TWELVE MONTHS.

Self-employment income, even if received within a short period, must be averaged over a twelve (12) month period if it is the household's annual support. The Non-farming self-employment income, if it is considered annual support by the household, must be averaged over a twelve (12) month period, even if it is received over a short time period and the household gets receives income from other sources in addition to self-employment. Self-employment income received on a monthly basis, which is a household's annual support, is averaged over a twelve (12) month period. (6-1-94)(10-1-06)T

4289. AVERAGING SEASONAL NON-FARMING SELF-EMPLOYED INCOME.

Seasonal non-farming self-employed households get receive income from self-employment during part of the year. Self-employment income intended to meet the household's needs for only part of the year must be averaged over the period of time the income is intended to cover. (6-1-94)(10-1-06)T

~~429. WHEN SELF-EMPLOYMENT INCOME MUST BE PROJECTED.~~

If the household has a large increase or decrease in self-employment income, the self-employment income must not be averaged using past income. The Department must project self-employment income for the coming year using Subsections 429.01 through 429.03. Add the net self-employment income to any other earned income received by the household. (6-1-94)

~~01. Step 1.~~ (6-1-94)

~~a.~~ *Self-employed less than one (1) year: If a self-employment enterprise has been in existence for less*

than a year, the income is averaged over the period the business has been in operation. If no income fluctuations are expected, the average monthly amount is projected for the coming year. (6-1-94)

b- *Self-employed for a short time:* If the business has been in operation for less than a year and there is not enough information to make a projection, the household may be certified for less than a year. When the business has been in operation long enough to establish an average income, a new projection may be made. (6-1-94)

02- ~~Step 2—Costs.~~ Subtract the cost of producing the self-employment income. The cost of producing the self-employment income is calculated by projecting the monthly costs of producing the self-employment income. (6-1-94)

03- ~~Step 3—Capital Gains.~~ Capital gains are the increase in value of an asset between the time it is bought and the time it is sold. Add capital gains the household predicts it will get in the next twelve (12) months from self-employment assets. (6-1-94)

a- Start projecting capital gains the date the application is filed. (6-1-94)

b- Divide the yearly total projected capital gains by twelve (12). The monthly amount is used during the next twelve (12) months. (6-1-94)

c- A new average monthly amount must be calculated for this twelve (12) month period if the capital gains changes. (6-1-94)

04- ~~Step 4—Add Capital Gains.~~ Add the projected monthly capital gains to the projected self-employment income. (6-1-94)

430. COMPUTING NON-FARMING SELF-EMPLOYMENT INCOME.

~~Procedures and rules for computing self-employment income are listed in Subsections 430.01 through 430.04. Self-employment income of households owning and operating a commercial boarding house is computed using Subsections 430.01 through 430.04. Add the net self-employment income to any other earned income received by the household. Compute non-farming self-employment income by adding projected monthly earnings to projected capital gains and subtracting the self-employment standard deduction.~~ (6-1-94)(10-1-06)T

01. ~~Step 1—Add Self-Employment Income.~~ For the self-employment income period, add all gross self-employment income. Determine Monthly Earnings. If no income fluctuations are expected, the average monthly amount is projected for the certification period. If past earnings are not reflective of expected future earnings, make a proportionate adjustment to the expected monthly earnings. Determine the monthly earnings by the using one (1) of the following: (6-1-94)(10-1-06)T

a. If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of self-employment. (10-1-06)T

b. If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation. (10-1-06)T

02. ~~Step 2— Add Self-Employment Monthly Capital Gains Income.~~ Capital gains ~~are~~ income is the increase in value of an asset between the time it is bought and the time it is sold. ~~Capital gains include profit from the sale or transfer of capital assets used in self-employment. Calculate capital gains using the Federal income tax method. Count the full amount of the capital gains as income for Food Stamps.~~ Determine if the household expects to receive any capital gains income from self-employment assets during the certification period. Add this amount to the monthly earnings as determined in Subsection 430.01 of these rules to determine the gross monthly income. (3-15-02)(10-1-06)T

03. ~~Step 3— Subtract Costs~~ Non-Farming Self-Employment Standard Deduction. Subtract the cost of producing the self-employment income. The household must have proof of costs. Allowable costs of producing self-employment income include, but are not limited to: Subtract fifty percent (50%) of the gross monthly income as a

self-employment standard deduction. This is the projected non-farming self-employment monthly income.

(6-1-94)(10-1-06)T

- ~~a.~~ The cost of labor paid to nonhousehold members. (6-1-94)
- ~~b.~~ The cost of stock. (6-1-94)
- ~~c.~~ The cost of raw material. (3-15-02)
- ~~d.~~ The cost for rent and utilities, advertising, shipping and legal fees. (6-1-94)
- ~~e.~~ The cost of seed and fertilizer. (6-1-94)
- ~~f.~~ Interest paid to purchase income producing property, including real estate. (6-1-94)
- ~~g.~~ Insurance premiums. (6-1-94)
- ~~h.~~ Taxes paid on income producing property. (6-1-94)
- ~~i.~~ Transportation, when a vehicle is an integral part of business activity. (6-1-94)
- ~~j.~~ Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery, and other durable goods. (3-15-02)
- 04. ~~Costs of Doing Business.~~** The following items are not allowed as costs of doing business: (6-1-94)
 - ~~a.~~ Net losses from previous periods. (6-1-94)
 - ~~b.~~ Federal, State, and local income taxes. (6-1-94)
 - ~~c.~~ Money set aside for retirement. (6-1-94)
 - ~~d.~~ Work related personal expenses such as transportation to and from work. (6-1-94)
 - ~~e.~~ Depreciation. (6-1-94)
 - ~~f.~~ Any costs exceeding the payment a household gets from a boarder for lodging and meals. (3-15-02)
- 05. ~~Step 4 — Average Income.~~** Divide the self-employment income by the number of months the income will be averaged. (6-1-94)
- 431. ~~COMPUTING NON-COMMERCIAL BOARDER INCOME.~~**
Income received from boarders, by a household not owning and operating a commercial boarding house, is computed using Subsections 431.01 through 431.03. Add the net self-employment income from the boarder to any other earned income received by the household. (6-1-94)
 - 01. ~~Step 1 — Add Income.~~** Add income from the boarder. Income from boarders includes all direct payments to the household for room and meals. Income includes contributions to the household's shelter expenses if paid directly to the household. Shelter expenses paid directly by boarders to someone outside the household are not income to the household. (6-1-94)
 - 02. ~~Step 2 — Subtract Costs.~~** Subtract cost of doing business. Cost is computed by:
 - ~~a.~~ Using the amount of the thrifty food plan for a household size equal to the number of boarders. (6-1-94)

~~**b.** If the actual cost exceeds the thrifty food plan, count the actual documented cost of providing room and meals. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders are counted. (6-1-94)~~

~~**e.** If the cost of doing business exceeds the payment the household receives from the boarder for lodging and meals, the negative balance must not be applied to other income. (6-1-94)~~

~~**03.** **Step 3 -- Use Remaining Income.** The remaining income is used in computing Food Stamp benefits. (6-1-94)~~

431. COMPUTING FARMING SELF-EMPLOYMENT INCOME.

For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 431.01 through 431.04 of these rules. (10-1-06)T

01. Determine Monthly Earnings. If no income fluctuations are expected, the average monthly amount is projected for the certification period. If past earnings are not reflective of expected future earnings, make a proportionate adjustment to the expected monthly earnings. Determine the monthly earnings by using one (1) of the following: (10-1-06)T

a. If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of farming self-employment. (10-1-06)T

b. If no tax return is available, the farming self-employment income is averaged over the period of time the enterprise has been in operation. (10-1-06)T

02. Add Monthly Capital Gains Income. Capital gains income is the increase in the value of an asset between the time it was bought and the time it was sold. Determine if the household expects to receive any capital gains income from farming self-employment assets during the certification period. Add this amount to the monthly earnings as determined in Subsection 431.01 of these rules to determine the gross monthly income. (10-1-06)T

03. Subtract Allowable Expenses. Subtract any allowable expenses for farming self-employment, except those listed in Subsection 431.04 of these rules for expenses that are not allowed. This is the projected farming self-employment monthly income. (10-1-06)T

04. Costs Not Allowed for Farming Self-Employment Expenses. The following items are not allowed as costs of doing business and may not be subtracted from the farming self-employment income. (10-1-06)T

- a.** Net losses from previous certification periods; (10-1-06)T
- b.** Federal, State, and local income taxes; (10-1-06)T
- c.** Money set aside for retirement; (10-1-06)T
- d.** Work related personal expenses such as transportation to and from work; and (10-1-06)T
- e.** Depreciation. (10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

501. INITIAL CHANGES IN FOOD STAMP CASE.

Act on changes in household circumstances found during the application or the initial interview. (6-1-94)

01. Anticipated Changes. A household can be eligible in the application month, but not eligible the

month after the application month because of expected changes in circumstances. The household may not be eligible for the application month, but eligible for the next month. The same application form is used for the denial and the next month's eligibility determination. (6-1-94)

02. Food Stamps for the Application Month. The household's Food Stamp issuance for the application month may differ from its issuance in later months. (6-1-94)

03. Food Stamp Issuance Changes. ~~The household's Food Stamp issuance may vary month to month, within the certification period, to reflect expected changes.~~ The Department will make changes to the household's Food Stamp issuance when it is required to act on a change. ~~(6-1-94)~~(10-1-06)T

04. Change Before Certification. If a household reports a change in household circumstances before certification and the Department can act on the change, include the reported information in determining Food Stamp eligibility and amount. (6-1-94)

05. Change After Certification. If a household reports a change after the initial Food Stamp benefit has been paid, the Department must act on the change if it was required to be reported or would increase the household's Food Stamp benefits under these rules. Changes in the household's expenses will not be acted upon until recertification. Notice of the change must be given to the Food Stamp household. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

509. TYPES OF INCOME TO BE AVERAGED.

Types of income to be averaged are listed below. Income for a destitute migrant ~~or~~ seasonal farm worker household is not averaged. ~~(6-1-94)~~(10-1-06)T

01. Self-Employment Income. Average self-employment income. (6-1-94)

02. Contract Income. Average contract income over the period of the contract, if not received on an hourly or piecework basis. Households with averaged contract income include school employees, share croppers and farmers. These households do not include migrants or seasonal farm workers. (6-1-94)

03. Scholarships or Education Loans. Average scholarship, deferred educational loan, or other educational grant income, after exclusions, over the period of intended use. Scholarships or education loans may cover part of a month. A partial month is counted as a whole month to determine the period of intended use. (6-1-94)

a. If education benefits are received in the middle of the coverage period average them over the entire period, after deducting allowable expenses. Count the average monthly amount for only the remaining months in the period covered. No overissuance exists for the previous months. (6-1-94)

b. If education costs are incurred and verified after the first month of the school term, average the expenses over the entire period of intended use. Deduct only the average monthly amount for the remaining months in the period of intended use. (6-1-94)

04. Income Received Less Often Than Monthly. When receipt of income is less often than monthly, the anticipated income can be averaged over the period intended to cover to determine the average monthly income. (6-1-94)

05. Child Support. Child support income can be averaged to make a valid projection for ongoing income. (10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

535. MEDICAL EXPENSES.

Medical expenses over thirty-five dollars (\$35), for elderly or disabled household members, are deducted from the household income. Allowable medical expense deductions are listed in Subsection 535.01 through 535.14 of these rules. The household must provide proof of the incurred or anticipated cost before a deduction is allowed.

~~(4-11-06)~~(10-1-06)T

01. Medical and Dental Services. Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

02. Psychotherapy and Rehabilitation Services. Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

03. Hospital or Outpatient Treatment. Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

04. Prescription Drugs. Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

05. Medical Supplies and Sickroom Equipment. Medical supplies and sickroom equipment including rental or other equipment. (6-1-94)

06. Health Insurance. Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

07. Medicare Premiums. Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)

08. Cost-Sharing or Spend-Down Expenses. Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)

09. Artificial Devices. Dentures, hearing aids, and prostheses. (6-1-94)

10. Guide Dog. Expenses incurred buying and caring for any animal trained and routinely used to help a disabled person. Expenses include costs for dog food, training, and veterinarian services. (4-6-05)

11. Eyeglasses. Expenses for eye examinations and prescribed eyeglasses. (4-6-05)

12. Transportation and Lodging. Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)

13. Attendant Care. Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)

14. Attendant Meals. One hundred nineteen dollars (\$119) per month are deducted if the household provides most of the attendant's meals. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

542. COSTS ALLOWED FOR SHELTER DEDUCTION.

Shelter costs are current charges for the shelter occupied by the household. Shelter costs include costs for the home temporarily not occupied because of employment or training away from home or illness. The costs allowed for the shelter deduction are listed below: (6-1-94)

01. House Payments. Mortgages, second mortgages, mortgage fees, home equity loans, and land payments. (4-6-05)

02. Rent. Rent and space rent. (6-1-94)

03. Homeless Shelter Deduction. The homeless shelter deduction is allowed for homeless households with some shelter expenses. It is established by FNS and may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. This deduction must not be used in combination with other costs allowed for shelter deduction. (4-11-06)

04. Condominium Fees. The entire condominium fee, including fees for maintenance of the structure and the grounds. (3-30-01)

05. Loan Payments. Loan repayments for the purchase of a mobile or motor home, including interest. (6-1-94)

06. Taxes And Insurance. Property taxes, state and local assessments, and insurance on the ~~structure~~ property. This also includes insurance on a vehicle used as a residence. (~~4-6-05~~)(10-1-06)T

07. Utilities. Only one (1) utility allowance (SUA, LUA, or MUA) may be used for a household. The costs used to determine the utility allowance are: heating, cooling, cooking fuel, electricity, the basic service fee for one (1) telephone (including wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and basic service for a cellular phone), water, sewer, garbage and trash collection, well installation and maintenance, septic tank system installation and maintenance, and fees for initial utility installation. One-time deposits cannot be included. (4-6-05)

08. Vehicle Payments. Payments for vehicles used as the primary residence for the household. (6-1-94)

09. Costs for Home Repairs. Nonreimbursable costs to repair a home damaged or destroyed by a natural disaster such as a fire or flood or earthquake. (6-1-94)

10. Home Temporarily Not Occupied. Shelter costs for the home temporarily not occupied because of employment, training away from home, illness, or abandonment caused by a natural disaster or casualty loss. This shelter cost may be in addition to the shelter cost for the home the household currently occupies. To receive the shelter deduction for a vacated home: (4-6-05)

a. The household must intend to return; (4-6-05)

b. Current occupants must not be claiming Food Stamp shelter costs; and (4-6-05)

c. The home must not be leased or rented. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

576. CERTIFICATION PERIODS.

A certification period must be assigned for each household. Households must be assigned a certification period based

on household circumstances at the time of application approval or recertification in accordance with 7 CFR 273.10(f) and 273.12, and the Farm Bill under Title IV, Subtitle A - Food Stamp Programs, Section 4109, regarding the state option to reduce reporting requirements. ~~Households can change certification periods and reporting type only at the time of application approval or recertification.~~ At the end of each certification period, entitlement to Food Stamps ends. Further eligibility starts only upon recertification based upon a newly completed application, an interview, and verification. The certification period cannot be lengthened nor can benefits be continued beyond the end of a certification period without a new determination of eligibility. (4-6-05)(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

694. COLLECTING CLAIMS.

The Department collects payment for claims using the methods listed in Subsections 695.01 through 695.065 of these rules. (3-15-02)(10-01-06)T

01. Allotment Reduction. The Department reduces the Food Stamp allotment to collect the claim. (3-15-02)

a. For an IPV claim, the allotment reduction limit is the greater of twenty dollars (\$20) per month or twenty percent (20%) of the household's monthly allotment. (3-15-02)

b. For an IHE or AE claim, the allotment reduction limit is the greater of ten dollars (\$10) per month or ten percent (10%) of the household's monthly allotment. The household can agree to a higher amount. (3-15-02)

c. The Department does not reduce the initial month's Food Stamps, unless the household agrees to this reduction. (3-15-02)

02. Repayment from EBT Account. The household pays the claim from its Electronic Benefit Transfer (EBT) account. (3-15-02)

03. Cash, Check, or Money Order. Payment by cash, check, or money order. (3-15-02)

~~**04. Paper Food Coupons.** Payment by paper Food Coupons. (3-15-02)~~

054. Household Performing Public Service. Payment by public service as ordered by a court, specifically as payment of a claim. (3-15-02)

065. Collection by Treasury Offset Program (TOP). The Department submits claims delinquent for one hundred and eighty (180) days, or more, for collection through TOP. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

698. INTENTIONAL PROGRAM VIOLATION (IPV).

An IPV includes the actions listed in Subsections 698.01 through 698.03 of these rules. The client must intentionally, knowingly, and willfully commit a program violation. (3-15-02)

01. False Statement. A person makes a false statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

02. Misleading Statement. A person makes a misleading statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

03. Misrepresenting. A person misrepresents facts to the Department, either orally or in writing, to get

Food Stamps. (6-1-94)

04. Concealing. A person conceals or withholds facts to get Food Stamps. (6-1-94)

05. Violation of Regulations. A person commits any act violating the Food Stamp Act, ~~or~~ Federal regulations, ~~A person commits any act violating~~ or State Food Stamp regulations. The violation may relate to ~~Food Stamps or Authorization to Participate (ATP)~~ use, presentation, transfer, acquisition, receipt, or possession of Food Stamps. ~~(3-15-02)~~(10-1-06)T

06. Trafficking in Food Stamps. Trafficking in Food Stamps means the buying or selling of ~~coupons, ATP cards~~ Food Stamps or other benefit instruments for cash, or consideration other than eligible food. Trafficking includes the exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, USC ~~Code~~, for ~~coupons or other~~ benefit instruments. ~~(3-15-02)~~(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

793. NARCOTIC ADDICT AND ALCOHOLIC TREATMENT CENTERS.

Narcotic addicts and their children residing in a treatment center may qualify for Food Stamps. Alcoholics and their children residing in a treatment center may qualify for Food Stamps. Food Stamp rules for residents in a drug addiction or alcohol treatment and rehabilitation program lasting at least thirty (30) days are listed below: (9-1-94)

01. Optional Appointment of Authorized Representative. Unless the household requests it, the center will not be made authorized representative on the household's own EBT card for months of benefits received while not in the center. (4-5-00)

02. Center Provides Certification List. Each month, each center must give the Field Office a list of current client residents. The list's accuracy must be certified in writing by the center manager or designee. The Department must conduct random on-site visits to assure list accuracy. If the list is not accurate, or the Department fails to act on the change, the Department may transfer the Food Stamp amount from the center's account to the household's Food Stamp account, for the months the household was not living in the center. (4-5-00)

03. Resident and Nonresident Clients. Eligible narcotic addicts or alcoholics must be certified as one (1) person households. Eligible narcotic addicts with children or alcoholics with children residing in a center must be certified as one (1) household. Clients not residing at the treatment center are certified under normal procedures. (9-1-94)

04. Food Stamp Basis. Eligibility and Food Stamp amounts must be based on income and resources. (6-1-94)

05. Work Registration. Resident clients are exempt from work registration. (6-1-94)

06. Expedited Processing. When the application needs expedited processing, Food Stamps must be received by the seventh calendar day after the application date. (7-1-98)

07. Normal Processing. If processing under normal procedures, the Department must verify circumstances before determining eligibility. Changes and recertifications are processed using the standards for all other households. Resident clients have the same rights to adverse action notices, fair hearings and lost Food Stamps as all other households. (6-1-94)

08. Center Misusing Food Stamps. The Department must promptly notify FCS if it believes a center is misusing ~~coupons~~ Food Stamps. The Department must not take action before FCS takes action against the center. ~~(7-1-98)~~(10-1-06)T

794. TREATMENT CENTER RESPONSIBILITIES.

Treatment Center responsibilities are listed below: (6-1-94)

01. Appoint Authorized Representative. The publicly operated community mental health or private nonprofit organization running the center must designate an authorized representative. (6-1-94)

a. The authorized representative must be an employee, over age eighteen (18). (6-1-94)

b. The authorized representative applies for, obtains and uses the Food Stamps on behalf of a resident. (6-1-94)

c. The Food Stamps can be used to purchase meals served at the center. (6-1-94)

d. The authorized representative must be knowledgeable about the financial circumstances of the client. (6-1-94)

e. The authorized representative's designation must not interfere with the treatment and rehabilitation program of the client. (6-1-94)

02. Notify Department of Changes. The center must notify the Department of changes in household circumstances affecting eligibility or Food Stamp amount, including when a resident leaves the center. (6-1-94)

03. Return Food Stamps. (6-1-94)

a. The center must return all issue documents and Food Stamps, not given to a departing resident, to the Department. (6-1-94)

b. Food Stamps must be returned to the Department if the client left before the sixteenth of the month and the center was unable to give him the Food Stamps. (6-1-94)

c. Food Stamps must be returned to the Department if they were left over for a resident who left on or after the sixteenth of the month. (6-1-94)

04. Fraud or Misrepresentation. The center is responsible for misrepresentation or fraud in certification of resident clients. The center is liable for residents' overissuances, losses, or misuse of Food Stamps. (6-1-94)

05. Give Food Stamps to Departing Client. (6-1-94)

a. The center must give the departing client the ID card and any unredeemed Food Stamps. (6-1-94)

b. The center must give the client a full month's Food Stamps if they have been issued, but none have been spent on behalf of the client. (6-1-94)

c. The center must give the departing client one-half (1/2) of the monthly Food Stamps if the client leaves before the sixteenth of the month and a portion of the Food Stamps have been spent on behalf of the client. (6-1-94)

d. If the client leaves the center on or after the sixteenth, and Food Stamps were issued and used, the center is not required to give Food Stamps to the client. (6-1-94)

06. End Representation. The center must not be an authorized representative for clients who leave the center. (6-1-94)

07. Food Stamp Misuse. The center must be disqualified if it is administratively or judicially found the center misappropriated or used ~~coupons~~ Food Stamps for purchases not contributing to a certified client's meals. (6-1-94)(10-1-06)T

08. FCS Disqualifies Center. If FCS disqualifies a center as a retailer, the Department must close residents' cases. Individual notice of adverse action is not required. (7-1-98)

795. RESIDENTS OF GROUP LIVING ARRANGEMENTS.

Disabled or blind residents of public or private non-profit group living arrangements, serving no more than sixteen (16) residents may get Food Stamps. Residents get Food Stamps under the same standards as other households. Group living arrangements rules are listed below: (6-1-94)

01. FCS Authorized Retailer or Department Certified. The center must be an FCS authorized retailer or be certified by the Department as a non-profit group living center. Center status must comply with Section 1616(e) of the Social Security Act or comparable standards of the Secretary of USDA. (7-1-98)

02. List of Residents. Each center must give the Field Office a list of current Food Stamp residents. The list must include a statement, signed by a center official, attesting the validity of the list. The Department must require the list on a periodic basis. The Department must conduct random on-site visits to assure the accuracy of the list. (6-1-94)

03. Application Option. Residents may apply on their own. Residents may apply as a group. Residents may apply through an authorized representative employed and designated by the center. Residents may apply through an authorized representative of the resident's choice. (6-1-94)

04. Residents Apply on Their Own Behalf. A person or a group of residents making up a household can apply on their own behalf. The center must determine the resident is physically and mentally capable of handling his own affairs. If the resident is eligible the center does not act as the authorized representative. The resident or group is responsible for reporting any changes affecting eligibility or benefit level. The resident is responsible for overissuances. (6-1-94)

05. Certification. Residents of a center applying through the center's authorized representative must be certified as a one (1) person household. Residents of a center applying on their own behalf must be certified according to household size. (6-1-94)

06. Benefit Level. Eligibility and benefit levels are based on the income and resources of the household. (6-1-94)

07. Exempt From Work Registration. Residents are exempt from work registration. (6-1-94)

08. Notices. Residents are entitled to notices of adverse action. If a group living arrangement center loses its authorization or certification notice is not required. (6-1-94)

09. Using Food Stamps. The Food Stamps may be used by the resident, a group of residents, or by the center to purchase food for the resident. The center may accept ~~coupons~~ Food Stamps as payment for meals. If residents purchase or prepare food for home consumption, the center must insure each resident's ~~coupons~~ Food Stamps are used for meals intended for that resident. (~~6-1-94~~)(10-1-06)T

10. Penalties and Disqualifications. The center can be penalized or disqualified if Food Stamps are misappropriated or used for purchases not contributing to the household. The misuse may be determined administratively or judicially. The Department must promptly notify FCS if it believes a center is misusing Food Stamps. The Department must not take action before FCS makes a determination. If FCS disqualifies a center as a retailer, the Department must suspend the center's authorized representative status for the same period. If the center loses FCS authorization to accept and redeem Food Stamps or is no longer authorized by the Department, its residents are no longer eligible for Food Stamps. The residents are not entitled to notice of adverse action. (7-1-98)

11. Authorized Representative Liability. Authorized representatives assigned by a group living arrangement ~~shall be~~ are liable for an over issuance, if they give false information. (~~3-15-02~~)(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

876. PERSONNEL REQUIREMENTS.

The Department must provide the qualified employees needed to assure prompt action on applications and issuance of benefits. Department employees certifying households for Food Stamps must be hired under Idaho Personnel Commission standards. Only qualified Department employees can interview households and determine eligibility and benefit amount. Only authorized employees or contractors of the Department may have access to Food Stamps; ~~Authorization to Participate (ATP) cards or other issuance documents.~~ (6-1-94)(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

883. QUALITY CONTROL AND FOOD STAMP ELIGIBILITY.

State Quality Control (SQC) is the Department's case review system. SQC determines rates of correct Food Stamp issuances and Department and recipient caused errors. ~~QC Quality control~~ reviews open Food Stamp cases, denials and closures. The quality control review period extends from October 1st to September 30th of the next year. Households selected for quality control review by State Quality Control (SQC) and Federal Quality Control (FQC) must cooperate with both reviews. If a household refuses to cooperate in a SQC or FQC review, it is ineligible for Food Stamps as shown below: (6-1-94)(10-1-06)T

01. Refusal to Cooperate with SQC or FQC. If a household refuses to cooperate in a SQC or FQC review, it is not eligible. The SQC analyst or FQC reviewer ~~will tell~~ must notify the appropriate Department Self Reliance Specialist (SRS) of the household's refusal to cooperate. (6-1-94)(10-1-06)T

b.a. The Department ~~must~~ send the household advance notice to end Food Stamps. The notice must list the reason for the proposed action ~~reason~~, the right to a hearing, the right to schedule a conference or to continue the SQC or FQC review. (6-1-94)(10-1-06)T

b.b. The Department will close the Food Stamp case. (6-1-94)

02. Food Stamp Eligibility During ~~QC Quality Control~~ Review Period, After Refusal to Cooperate. ~~The QC review period extends from October 1 to September 30.~~ The household is not eligible for Food Stamps during the ~~QC Quality Control~~ review period until it cooperates with the SQC or FQC review. (6-1-94)(10-1-06)T

03. Food Stamps After Review Period, Refusal to Cooperate With SQC. ~~The QC review period extends from October 1 to September 30.~~ The household is not eligible for Food Stamps until ~~ninety five (95) one hundred thirteen (113)~~ one hundred thirteen (113) days after the end of the annual review period. After this time: (6-1-94)(10-1-06)T

a. The household must reapply. (6-1-94)

b. The household must supply proof of all current eligibility information before certification. (6-1-94)

04. Food Stamps After Review Period, Refusal to Cooperate with FQC. ~~The QC review period extends from October 1 to September 30.~~ The household is not eligible for Food Stamps until seven (7) months after the end of the annual review period. After this time: (6-1-94)(10-1-06)T

a. The household must reapply. (6-1-94)

b. The household must supply proof of all current eligibility information before certification. (6-1-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE
AGED, BLIND AND DISABLED (AABD)**

DOCKET NO. 16-0305-0603

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date for this temporary rule is January 1, 2007.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-209n, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

| | | |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Date: Thursday, October 12, 2006 | Tuesday, October 17, 2006 | Tuesday, October 17, 2006 |
| Time: 7:00 p.m. | 7:00 p.m. | 7:00 p.m. |
| Place: DHW Region I Office Suite 102 1120 Ironwood Dr. Coeur d'Alene, ID | Idaho Falls Public Library 457 Broadway Idaho Falls, ID Phone: (208) 612-8455 | DHW - Region IV Office 1720 Westgate Dr. Suite D, Room 119 Boise, ID |

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Many people on Medicaid want to work and recognize that employment is the way to end their dependence on Medicaid. However, individuals with disabilities, because of the cost of their support needs and the fact that most employers provide no insurance coverage for those supports, must curtail the number of work hours in order to keep their Medicaid benefits. The Medicaid for Workers with Disabilities program will help these individuals gradually leave or lessen their reliance on Medicaid while increasing their work hours and income. These rule changes will implement the provisions of Section 56-209n, Idaho Code, adopted by the 2006 Legislature, by setting the criteria for eligibility in determining how a working disabled individual's income and resources will be calculated to establish Medicaid eligibility.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b) and (c), the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Governing law requires that the Workers with Disabilities be effective on January 1, 2007, and this rulemaking confers a benefit to those individuals eligible for the Workers with Disabilities program.

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

For the fiscal year 2007, the impact of this rule change to the State General Fund is \$233,900 as appropriated in the 2007 Department Budget.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Department held formal negotiations on June 14, 2006, in Boise, Idaho. Participants at the negotiations included; Comprehensive Advocacy Inc., Idaho Commission for the Blind and Visually Impaired, Idaho Division of Vocational Rehabilitation, State Independent Living Council, Mountain States Group, and the Idaho Council on Developmental Disabilities. The Negotiated Rulemaking Notice was published in the Idaho Administrative Bulletin, Vol. 06-6, on June 7, 2006, page 96.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance

on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 25, 2006.

DATED this 11th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0603

792. -- 7998. (RESERVED).

799. MEDICAID FOR WORKERS WITH DISABILITIES.

An individual is eligible to participate in the Medicaid for Workers with Disabilities coverage group if the individual meets all of the following: (1-1-07)T

01. Age. An individual must be at least sixteen (16) but less than sixty-five (65) years of age. (1-1-07)T

02. Disability. An individual must meet the medical definition for having a disability or blindness used by the Social Security Administration for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits. (1-1-07)T

03. Employment. An individual must be employed which may include self-employment. Proof of employment must be provided to the Department. Hourly wage or hours worked will not be used to determine employment. (1-1-07)T

04. Resources. A participant's countable resources cannot exceed ten thousand dollars (\$10,000). When calculating resources the following items will be excluded: (1-1-07)T

a. Any resources excluded under Sections 200 through 299 of these rules; (1-1-07)T

b. A second car; (1-1-07)T

c. Life insurance policies; (1-1-07)T

d. Retirement accounts; and (1-1-07)T

e. Exempt trusts. (1-1-07)T

05. Income. A participant's countable income, after exclusions and disregards used for AABD as described in Sections 300 through 499 of these rules, cannot exceed five hundred percent (500%) of the current federal poverty guideline. The gross earned income cannot be less than fifteen percent (15%) of the participant's total gross income. (1-1-07)T

06. Cost-Sharing Premium. A participant in the Medicaid for Workers with Disabilities coverage group may be required to pay a cost-sharing premium. A participant's premium for his share of Medicaid costs is determined under the provisions in IDAPA 16.03.18, "Medicaid Cost-Sharing." (1-1-07)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE
AGED, BLIND AND DISABLED (AABD)**

DOCKET NO. 16-0305-0604

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date for this temporary rule is January 1, 2007.

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 regular rulemaking procedures have been initiated. 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 11, 2006 - 6:00 p.m.
Medicaid Region IV Office
1720 Westgate Dr., Suite D, Rm 119
Boise, Idaho**

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Medicaid participants on the Aged and Disabled Waiver program, who reside in a residential care facility or certified family home, are budgeted a basic allowance for their out-of-pocket costs and an allowance for the cost of rent, utilities and food. The Department negotiated this rulemaking to establish a method for the distribution of the annual cost-of-living adjustment increase to the two allowances. These rule changes reflect those negotiated percentages for the annual distribution between the basic allowance and the allowance for rent, utilities, and food.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

In order to have rules in effect for distribution of the next cost-of-living annual increase, these rules are being adopted as temporary rules to meet this deadline.

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

There is no anticipated fiscal impact increase to the state general fund. These changes are a distribution of funds budgeted for participants in the Aged and Disabled Waiver program.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with Certified Family Home Providers, Residential Care or Assisted Living Facility Providers, Idaho Health Care Association, and the Idaho Residential Supported Living Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 25, 2006.

DATED this 22nd day of August, 2006.

Sherri Kovach, Program Supervisor
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0604

500. FINANCIAL NEED AND AABD CASH AMOUNT.

To be eligible for AABD cash and Medicaid, the participant must have financial need. The participant has financial need if his allowances, as described in Sections 501 through 513 of these rules, are more than his income. The amount of financial need is the amount that the allowances exceed income. If the participant is eligible, his AABD cash payment is the difference between his financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. AABD cash is paid electronically as set forth in IDAPA 16.03.20, "Rules Governing Electronic Payments (EP) of Public Assistance, Food Stamps, and Child Support."

~~(3-30-01)~~(1-1-07)T

501. BASIC ALLOWANCE.

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.054 of these rules. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount.

~~(5-3-03)~~(1-1-07)T

01. Single Participant. Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. of these rules. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

~~(3-30-01)~~(1-1-07)T

- a. Living alone. (7-1-99)
- b. Living with his ineligible spouse. (7-1-99)
- c. Living with another participant who is not his spouse. (7-1-99)
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from his parent, child or sibling. (3-30-01)
- e. Living with his TAFI child. (7-1-99)

02. Couple or Participant Living with Essential Person. Through December 31, 2000, a participant living with his participant spouse or his essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded up. (3-30-01)

03. SIGRIF. A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance. (7-1-99)

~~**04. Room and Board Home.** A participant living in a room and board home, as defined in Section 512, is budgeted seventy-seven dollars (\$77) monthly as a basic allowance.~~ (3-1-06)T

054. Personal Care Supplement. A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. The amount of the supplement is the remainder when income, less exclusions and disregards, is subtracted for the basic allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. ~~(5-3-03)~~(1-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

512. ROOM AND BOARD HOME ALLOWANCE.

Room and board is a living arrangement where the participant purchases lodging (room) and meals (board) from a person he lives with who is not his parent, child or sibling. (1-1-07)T

01. Budgeted Room and Board Allowance. Beginning January 1, 2006, a participant living in a room and board home is budgeted six hundred ninety-three dollars (\$693). Beginning January 1, 2007, the Room and Board allowance ~~increase is the dollar amount~~ will be adjusted annually by eighty percent (80%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The room and board allowance increase will be rounded up to the next dollar. ~~(1-1-06)~~(1-1-07)T

02. Basic Allowance for Participant in Room and Board Home. A participant living in a room and board home is budgeted seventy-seven dollars (\$77) monthly as a basic allowance. Beginning January 1, 2007, this basic allowance will be adjusted annually by twenty percent (20%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded down to the nearest dollar. (1-1-07)T

513. RESIDENTIAL CARE ~~AND~~ OR ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.

A participant living in a Residential Care ~~and~~ or Assisted Living Facility (RALF), (in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho.") or a Certified Family Home (CFH), (in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes.") ~~with State Plan Personal Care Services,~~ is budgeted a basic allowance of seventy-seven dollars (\$77) monthly. Beginning January 1, 2007, this basic allowance will be adjusted annually by twenty percent (20%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded down to the nearest dollar. (1-1-07)T

01. Budgeted Monthly Allowance Based On Level of Care. A participant is ~~also~~ budgeted a monthly allowance for care based on his assessed level of care as described in Section 514 of these rules. If the participant ~~gets~~ receives a lower State Plan Personal Care Service (PCS) level of ~~RALF or CFH~~ care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine eligibility income limits for Medicaid if the participant does not qualify for the Home and Community Based Services Waivers. These allowances are only used for AABD cash when the participant is entitled to the DD Waiver in accordance with Section 789-"Developmentally Disabled (DD) Waiver," of ~~this~~ these rules. If the participant does not require ~~the RALF or CFH~~ one (1) of the State Plan PCS levels of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. ~~(3-1-06)~~(1-1-07)T

02. Care Levels and Monthly Allowances. Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning January 1, 2007, the RALF and CFH allowances ~~increase by the full dollar amount~~ for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by eighty percent (80%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded up to the next dollar.

| TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06 | | |
|-----------------------------------------------------------------------|---------------|-----------------------------------------------|
| | Level of Care | Monthly Allowance |
| a. | Level I | Eight hundred and thirty-five dollars (\$835) |
| b. | Level II | Nine hundred and two dollars (\$902) |
| c. | Level III | Nine hundred and sixty-nine dollars (\$969) |

~~(1-1-06)~~(1-1-07)T

023. CFH Operated by Relative. A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH State Plan PCS allowances. He may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

~~(3-15-02)~~(1-1-07)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-0606

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(b) and 56-203(g), Idaho Code, and HCR 53 (2006).

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 Wednesday, October 18, 2006.

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:

At the recommendation of the 2006 legislature (HCR 53), the Department is proposing a rule that requires Medicare-eligible individuals to enroll in Medicare as a condition of eligibility for Idaho Medicaid. The purpose of this change is to reduce Medicaid costs while at the same time maintaining the same level of medical benefits to individuals who are eligible for both Medicaid and Medicare.

This rule change also brings the rules into compliance with this same eligibility requirement that now appears in the newly rewritten Medicaid State Plan.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. The implementation of this rule change is projected to result in a savings of \$640,888 to the state general fund for fiscal year 2007. NOTE: This is a savings in the Division of Medicaid's Trustee and Benefit budget; it is not a reduction in the Division of Welfare's budget.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking was done to align with legislation passed during the 2006 legislative session and with recent changes to Department's Medicaid State Plan.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Peggy Cook at (208) 334-5969.

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 Wednesday, October 25, 2006.

DATED this 22nd day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0606

707. ~~GROUP HEALTH PLAN ENROLLMENT REQUIREMENT~~ APPLICATION REQUIREMENTS FOR POTENTIAL MEDICAL COVERAGE.

01. Group Health Plan Enrollment Requirement. ~~The~~ Each participant must apply for and enroll in a cost-effective employer group health plan as a condition of eligibility for Medicaid. Medicaid coverage must not be denied, delayed, or stopped pending the start of a participant's group health insurance coverage. A child entitled to enroll in a group health plan must not be denied Medicaid coverage solely because his caretaker fails to apply for the child's enrollment. (3-30-01)()

02. Medicare Enrollment Requirement. Each participant who may be eligible for Medicare must apply for all parts of Medicare parts A, B, and D for which he is likely to be eligible, as a condition of eligibility for Medicaid. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

DOCKET NO. 16-0308-0601

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 56-202, Idaho Code, and 45 CFR Parts 260 - 265.

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 18, 2006.

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:

Families who apply for Temporary Assistance for Families in Idaho (TAFI) monies need reliable transportation in order to seek and maintain employment, to further their education, and to transport their children. Idaho's current policy of counting the value of a family's vehicle in determining their eligibility for TAFI often forces the family to sell their reliable vehicles in order to meet their family's most basic financial needs. Because of Idaho's restrictive rules, those who are most hurt by the current rules are two (2)-parent households, working adults, households suffering recent job loss, and those living in rural Idaho. The proposed changes will exclude one (1) vehicle per adult family member in a TAFI household. These changes will promote and support the working families in Idaho and are especially valuable to families living in rural Idaho who have limited access to public transportation. Proposed changes will become effective July 1, 2007.

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

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

There may be a slight increase in the number of families approved for TAFI, but there will be no fiscal impact to the state general funds. The Temporary Assistance to Needy Families is a federal block grant used to fund the TAFI program.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change was due to federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

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, 25, 2006.

DATED this 14th day of August, 2006.

Sherri Kovach, Program Supervisor
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 FOR DOCKET 16-0308-0601

207. **COUNTING VEHICLES VALUE.**

The Department counts the resource value of a vehicles as described in Subsections 207.01 ~~through and~~ 207.07~~2~~ of these rules as long as the vehicle is used primarily for transportation and not for recreational use. The value of any vehicle that is primarily for recreational use counts toward the household's resource limit. (3-15-02)(____)

~~01. **Vehicle Used to Transport Disabled Household Member.** The Department does not count as a resource the value of any vehicle used to transport a physically disabled household member, regardless of the purpose of the transportation, even if that person is a disqualified or an ineligible household member. **Exclude One Vehicle Per Adult.** The value of one (1) vehicle per adult in the TAFI household is excluded beginning with the highest valued vehicle.~~ (3-15-02)(____)

~~02. **Vehicle Necessary for Household Function.** The Department does not count as a resource the value of any vehicle meeting one (1) of the conditions in Subsections 207.02.a. through 207.02.d. **All Other Vehicles Subject to Federal Regulations.** All other vehicles in the household will have their values counted as provided in the Federal Food Stamp Program under 7 CFR 273.8.~~ (3-15-02)(____)

~~a. The vehicle produces income consistent with its Fair Market Value (FMV). (3-15-02)~~

~~b. The household uses the vehicle as their home. (3-15-02)~~

~~c. A migrant farm worker uses the vehicle to travel from job to job. (3-15-02)~~

~~d. The household uses the vehicle to carry their primary source of heating fuel or water. (3-15-02)~~

~~03. **Vehicle Value Less Than Fifteen Hundred Dollars.** The Department does not count as a resource the value of any vehicle having a fair market value, or equity value, of less than fifteen hundred dollars (\$1,500).~~ (3-15-02)

~~04. **Adults and Vehicle Value Greater Than Four Thousand Six Hundred Fifty Dollars.** The Department counts as a resource the FMV, above four thousand six hundred fifty dollars (\$4,650), of one (1) vehicle per adult household member, regardless of use.~~ (3-15-02)

~~05. **Persons Under Age Eighteen and Vehicle Value Greater Than Four Thousand Six Hundred Fifty Dollars.** The Department counts as a resource the FMV, above four thousand six hundred fifty dollars (\$4,650), of one (1) vehicle per household member under age eighteen (18), when used by that person to commute to work, school, training or to look for work. This applies even if another vehicle was already totally excluded for that household member.~~ (3-15-02)

~~06. **Other Vehicles.** The Department counts as a resource the FMV, minus encumbrances or equity value, whichever is higher, of licensed or tagged vehicles, snowmobiles, boats, aircraft or other recreational vehicles not falling under the provisions of Subsections 207.01 through 207.05.~~ (3-15-02)

~~07. **Unlicensed Vehicles.** The Department counts as a resource the equity value of any unlicensed vehicles.~~ (3-15-02)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

DOCKET NO. 16-0308-0602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2006.

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 56-202, Idaho Code, and 45 CFR Parts 260 - 265.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order for the Department to help meet federal requirements and improve the work participation rates in the Temporary Assistance for Families in Idaho (TAFI) program, these rules are being amended. The following changes will help meet and assist in improving the work skills and training necessary for the work participants to be successful in obtaining jobs. To meet this responsibility the following changes are being made:

- 1) The Work Incentive table is being updated to the current monthly grant amount.
- 2) The advance notification requirement is being removed when a work participant fails to meet his personal obligations for participating in the program.
- 3) Required Administrative Procedures Act sections not currently in rule are being added.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason: These rule changes are necessary for compliance with deadlines in governing law for this federal program.

FEE SUMMARY: 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 and the fee is described herein: N/A

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

There is no anticipated fiscal impact to the state general funds as a result of this rule change. These changes will help the state meet the work participation rate requirements and avoid penalties which could reduce the amount of the block grant or cause the state to replace the penalty amount if these rates are not met.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to requirements in the reauthorization of the Temporary Assistance to Needy Families (TANF) federal block grant.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

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 27, 2006.

DATED this 22nd day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0602

000. LEGAL AUTHORITY.

The Idaho Department of Health and Welfare is authorized to adopt rules for the administration of public assistance programs ~~by~~ under Section 56-202, Idaho Code, and 45 CFR Parts 260 - 265. (~~7-1-98~~)(10-1-06)T

001. TITLE, ~~AND~~ SCOPE, AND PURPOSE.

01. Title. These rules are ~~known and will be~~ cited as the *Rules of the Idaho Department of Health and Welfare*, IDAPA 16.03.08, “Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program.”

(10-1-06)T

02. Scope. These rules provide standards for the administration of the TAFI program.

(~~7-1-98~~)(10-1-06)T

03. Purpose. The purpose of these rules are to help participants in the Temporary Assistance for Families in Idaho (TAFI) program to obtain jobs by providing assistance and support. This focus requires more than government alone can or should provide. This program requires relationships where participants, families, local communities and employers work together to help participants obtain employment and achieve self-reliance. Department resources for applicants and participants will be provided in the following priority order, if applicable: Child Support Services (CSS); child care assistance; other Department services such as Medicaid, Food Stamps, Aid to the Aged, Blind and Disabled (AABD); and TAFI.

(10-1-06)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules.

(10-1-06)T

003. ADMINISTRATIVE APPEAL.

Administrative appeals are governed by IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.”

(10-1-06)T

004. ~~TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO~~ INCORPORATION BY REFERENCE.

The goals of Temporary Assistance for Families in Idaho (TAFI) are jobs for participants and support for both personal and family responsibility. This focus requires more than government alone can or should provide. This program requires relationships where participants, families, local communities and employers work together to help participants obtain employment and achieve self-reliance. Department resources for applicants and participants will be provided in the following priority order, if applicable: Child Support Services (CSS); child care assistance; other Department services such as Medicaid, Food Stamps, Aid to the Aged, Blind and Disabled (AABD); and TAFI. No documents have been incorporated by reference in this chapter of rules.

(~~7-1-98~~)(10-1-06)T

005. RULE AVAILABILITY OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

Copies of these rules are available from the Administrative Procedures Section, 10th Floor, Towers Building—450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036. (7-1-98)

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. (10-1-06)T

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. (10-1-06)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-06)T

04. Telephone. (208) 334-5500. (10-1-06)T

05. Internet Website Address. The website address is: "http://www.healthandwelfare.idaho.gov." (10-1-06)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.

01. Confidentiality of Records. Information received by the Department is subject to the provisions of IDAPA 16.05.01, "Use and Disclosure of Department Records." (10-1-06)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (10-1-06)T

0067. —009. (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse or Misconduct." (10-1-06)T

009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

251. WORK INCENTIVE TABLE.

Work Incentive Table 251 is used in the calculation of the grant amount for families with earned income.

| WORK INCENTIVE TABLE 251 | |
|--------------------------|----------------------|
| Number of Family Members | Monthly Amount |
| 1 | \$304 309 |
| 2 | \$304 309 |
| 3 | \$382 389 |
| 4 | \$459 469 |

| WORK INCENTIVE TABLE 251 | |
|--------------------------|-----------------------------|
| Number of Family Members | Monthly Amount |
| 5 | \$537 547 |
| 6 | \$614 628 |
| 7 | \$692 708 |
| 8 | \$769 787 |
| 9 | \$847 867 |
| 10 | \$925 947 |
| Over 10 Persons | Add \$78 80 Each |

~~(4-5-00)~~(10-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

302. ADVANCE NOTIFICATION NOT REQUIRED.

Notification must be provided by the date of the action, but advance notification is not required when a condition listed in Subsections 302.01 through 302.067 exists. ~~(7-1-98)~~(10-1-06)T

- 01. Family Request.** The family requests closure of the grant in writing. (7-1-98)
- 02. Family Member in Institution.** A family member is admitted or committed to an institution. (7-1-98)
- 03. Family's Address Unknown.** The family's whereabouts are unknown and Department mail is returned showing no known forwarding address. (7-1-98)
- 04. TANF Received in Another State.** A family member is receiving TANF in another state. (7-1-98)
- 05. Child Removed.** A child family member is removed from the home due to a judicial determination. (7-1-98)
- 06. Intentional Program Violation (IPV).** An IPV disqualification begins the first month after the month the member receives written notice of disqualification. (7-1-98)
- 07. Failure to Comply with Personal Responsibility Contract.** A participant fails to comply with activities agreed to in the participant's Personal Responsibility Contract. (10-1-06)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.18 - MEDICAID COST-SHARING

DOCKET NO. 16-0318-0602 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2007.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-209n, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

| | | | |
|---------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Date: | Thursday, October 12, 2006 | Tuesday, October 17, 2006 | Tuesday, October 17, 2006 |
| Time: | 7:00 p.m. | 7:00 p.m. | 7:00 p.m. |
| Place: | DHW Region I Office Suite 102 1120 Ironwood Dr. Coeur d'Alene, ID | Idaho Falls Public Library 457 Broadway Idaho Falls, ID Phone: (208) 612-8455 | DHW - Region IV Office 1720 Westgate Dr. Suite D, Room 119 Boise, ID |

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Many people on Medicaid want to work and recognize that employment is the way to end their dependence on Medicaid. However, individuals with disabilities, because of the cost of their support needs and the fact that most employers provide no insurance coverage for those supports, must curtail the number of work hours in order to keep their Medicaid benefits. The Medicaid for Workers with Disabilities program will help these individuals gradually leave or lessen their reliance on Medicaid while increasing their work hours and income. These rule changes will implement the cost-sharing provisions of Section 56-209n, Idaho Code, adopted by the 2006 Legislature to help individuals with disabilities be eligible for Medicaid while working.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Governing law requires that Medicaid for Workers with Disabilities be effective on January 1, 2007, and this rulemaking confers a benefit to those individuals eligible for the Workers with Disabilities 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:

This rule change will impose a premium based on the Federal Poverty Guideline (FPG) as a sliding fee in order for individuals with disabilities to retain Medicaid coverage while working.

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

For the fiscal year 2007, the impact of this rule change to the State General Fund is \$233,900 as appropriated in the 2007 Department Budget.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Department held formal negotiations on June 14, 2006, in Boise, Idaho. Participants at the negotiations included the following; Comprehensive Advocacy Inc., Idaho Commission for the Blind and Visually Impaired, Idaho Division of Vocational Rehabilitation, State Independent Living Council, Mountain States Group, and the Idaho Council on

Developmental Disabilities. The Negotiated Rulemaking Notice was published in the Idaho Administrative Bulletin, Vol. 06-6, on June 7, 2006, page 96 under Docket No. 16-0305-0603.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robin Pewtress at (208) 364-1892.

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 25, 2006.

DATED this 4th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0318-0602

201. -- ~~249~~14. (RESERVED).

215. PREMIUMS FOR PARTICIPATION IN MEDICAID ENHANCED PLAN.

01. Workers with Disabilities. A participant in the Medicaid for Workers with Disabilities coverage group must share in the cost of Medicaid coverage, if required. Countable income is determined under IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." A participant's premium for his share of Medicaid costs under this coverage group is determined in Subsections 215.02 through 215.04 of this rule. (1-1-07)T

02. Countable Income at or Below 133%. A participant who has countable income at or below one hundred thirty-three percent (133%) of the current federal poverty guideline is not required to pay a premium for Medicaid. (1-1-07)T

03. Countable Income Above 133% to 250%. A participant who has countable income above one hundred thirty-three percent (133%) to two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium of ten dollars (\$10) to the Department. (1-1-07)T

04. Countable Income in Excess of 250%. A participant who has countable income in excess of two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium to the Department. The amount due is the greater of ten dollars (\$10); or seven and one-half percent (7.5%) of the participant's income above two hundred fifty percent (250%) of the current federal poverty guideline. (1-1-07)T

05. Recomputed Premium Amount. Premium amounts are recomputed when the participant's income changes twenty-five percent (25%) or more or at his annual re-determination. (1-1-07)T

216. -- 249. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-0601

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: 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, 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 Wednesday, October 18, 2006.

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:

Several areas in the rules governing family and children's services have been amended and clarified to provide improved safety, permanency, and well-being for children in foster care, children being adopted, and their families.

Rules are being amended to:

1. Achieve consistency with statute on guardianship assistance;
2. Reflect "best practice" in the child protection rules and the adoption rules for out-of-state adoptions, home studies, support, supervision, and limits on state-funded adoption and guardianship assistance; and
3. Revise the foster care rules to modify the requirements in "Professional Foster Care" and delete references to discontinued community programs.

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

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

The changes to the out-of-state placement rules will result in savings in travel expenses of approximately \$50,000 per year, for workers to visit children placed out of state.

To estimate the impact to the state general fund for adoption and guardianship assistance rule changes, it was determined that there are five (5) children who would be impacted in the 2005-2006 State Fiscal Year who would not qualify under this rule change. The total annual general fund expenditures for these children is approximately \$15,000 per year.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being made to be consistent with the Title 56, Chapter 8, Idaho Code, regarding "Hard to Place Children" and to reflect "best practice."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 Wednesday, October 25, 2006.

DATED this 16th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-0601

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department, or the Board of Health and Welfare, or both jointly, the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need, under the following Sections: 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, ~~and 56-1004, and 56-1004A,~~ Idaho Code. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. ~~MANDATORY CRIMINAL HISTORY CHECKS (RESERVED).~~

~~The following persons shall participate in a criminal history check in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks": All current Department employees, applicants, transfers, reinstated former employees, student interns, promotes, contract employees, qualified individuals, volunteers, and others assigned to programs that involve direct contact with children. Programs within the Department that involve direct contact with children include, but are not limited to, the following: State Hospital South, Adolescent Program; all regionally operated day treatment programming staffed by personnel of the Family and Children's Services Programs and/or Mental Health Programs and Child Development Center Programs and others; and all other programs that include provision of services to children as an alternative to parental care for all or any portion of the day. "Others assigned" specifically refers to employees of the Department of Education or local school districts assigned to regional day treatment programming or institutional settings.~~ (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

008. ~~009.~~ (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All current Department employees, applicants, transfers, reinstated former employees, student interns, contract employees, Certified Adoption Professionals, volunteers, and others assigned to programs that involve direct contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." (____)

02. Availability to Work or Provide Service. Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." The criminal

history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. ()

03. Adoption. An individual applying to the Department to be an adoptive parent or petitioning the court for the adoption of a child must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." ()

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules ~~contained in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services,"~~ the following terms ~~and abbreviations~~ are used as defined in ~~Sections 010 through 013 of~~ Section 010: (4-6-05)()

01. IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (3-18-99)

02. Adoption Assistance. Funds provided to adoptive parent(s) of children who have special needs ~~and/or who~~ could not be adopted without financial or medical assistance. (5-3-03)()

03. Adoption Services. Protective services through which children are provided with permanent homes, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-3-03)()

04. Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, in accordance with the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act. (3-30-01)

05. Alternate Care Plan. A federally required component of the Family Plan for children in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. (5-3-03)

06. Area of Concern. Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. ()

067. Assessment. The first step in the planning process, which results in the outcome of which is the systematic documentation of the family's issues areas of concern, their strengths, and desired outcomes. (3-30-01)()

078. Board. The Idaho State Board of Health and Welfare. (3-18-99)

089. Case Management. A change-oriented service to families that assures and coordinates the provision of family risk assessment, family case planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (3-18-99)()

09. Case Plan. See "Family Plan". (3-18-99)

10. Central Office. ~~The state level administrative office of the Department of Health and Welfare located in Boise, Idaho.~~ (3-18-99)

110. Certified Adoption Professional (formerly "qualified individual"). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

121. Child Mental Health. All of the following children under eighteen (18) years of age ~~shall~~ must be

served without regard to income or type of health insurance: ~~(3-30-01)~~()

- a. Those who have a serious emotional disturbance or a grave disability due to a serious mental illness; and (3-30-01)
- b. Present a significant risk of harm to themselves or to others, due to their mental illness; and (3-30-01)
- c. Because of their mental illness are at risk for out-of-home placements or are currently in out-of-home placement and lack adequate resources to participate in their community's non-public system of care; or (3-30-01)
- d. Are involuntarily committed to the Department for out-of-home placement. (3-30-01)

~~132.~~ **Child Mental Health Services.** Services provided in response to the needs of children with a serious emotional disturbance and their families. These services are provided in accordance with the provisions of Section 16-2402 et seq., Idaho Code, the "Children's Mental Health Services Act". (3-30-01)

~~143.~~ **Child Protection.** All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter ~~shall~~ must be served without regard to income. ~~(3-30-01)~~()

~~154.~~ **Child Protective Services.** Services provided in response to potential, alleged or actual abuse, abandonment or neglect of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act". (3-18-99)

~~165.~~ **Compact Administrator.** The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code; or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq., Idaho Code. (3-20-04)

~~17.~~ **Concurrent Planning.** *Planning which addresses a child's need for a permanent family by working toward family reunification while, at the same time, developing an alternative plan that will provide permanency for the child through adoption, guardianship, placement with a relative or other permanent placement.* ~~(3-30-01)~~

~~18.~~ **DHW Regions.** *Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices.* (3-18-99)

~~196.~~ **Day Care for Children.** Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (3-18-99)

~~2017.~~ **Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis. (3-18-99)

~~218.~~ **Department.** The Idaho Department of Health and Welfare. (3-18-99)

~~2219.~~ **Deprivation.** One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. ~~(4-6-05)~~()

~~20.~~ **Desired Result.** Behaviorally-specific description of how the family circumstances will look when

the risk factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. ()

231. Director. The Director of the Idaho Department of Health and Welfare or his designee. (3-18-99)()

242. Extended Family Member of an Indian Child. As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.
For the purposes of these rules, the following terms are used as defined in Section 011: ()

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. Family and Children's Services (~~FACS~~). Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (3-18-99)()

03. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and ~~for safety issues that threaten~~ threats to family integrity, unity, or the ability to care for their members. (3-18-99)()

04. Family Case Record. Electronic and hard copy compilation of all documentation relating to a family, including, but not limited to, legal documents, identifying information, and evaluations. (3-30-01)

~~**05. Family Centered Services.** An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the safety, well being and permanency of children.~~ (3-30-01)

065. Family (Case) Plan. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders ~~and~~ or leaders should be consulted early in the plan development. (3-30-01)()

076. Family Services Worker. Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. (3-20-04)

087. Field Office. A Department of Health and Welfare service delivery site. (3-18-99)

08. FOCUS (Family Oriented Community User System). This is the Department's computer information system used by Family and Children's Services personnel to maintain federally-required child welfare information. FOCUS provides a case management system for Child Protection, Adoptions, Children's Mental Health, Interstate Compact, and Independent Living for the Department. ()

09. Goal. A statement of the long term outcome or plan for the child and family. (3-18-99)

10. Guardianship Assistance. State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (5-3-03)()

11. Immediate Safety Assessment. Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Family and Children's Services response. ()

12. Independent Living. Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (3-30-01)

123. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

134. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

145. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

156. Indian Child's Tribe. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

167. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

~~**17. Information and Referral Services.** A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-01)~~

18. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

19. Interethnic Adoption Provisions of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)

20. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

~~**21. Issue.** Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (3-30-01)~~

221. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

23. Kinship Care. Alternative care that is provided by kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms are used as defined in Section 012: ()

01. Legal Guardianship. A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)

02. Licensed. Facilities or programs ~~being~~ are licensed in accordance with the provisions of ~~Idaho Department of Health and Welfare Rules~~ IDAPA 16.06.02, "Rules ~~and~~ Governing Standards for Child Care Licensing." (3-18-99)()

03. Licensing. See ~~Idaho Department of Health and Welfare Rules~~ IDAPA 16.06.02, "Rules ~~and~~ Governing Standards for Child Care Licensing," Section 100. (3-18-99)()

04. Medicaid. See "Title XIX." (3-30-01)

05. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

~~**06. Objective.** Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-01)~~

076. Parent(s). The person(s) who, by birth or through adoption, is considered legally responsible for a child. For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s): birth parent(s), foster parent(s), adoptive parent(s), step-parent(s), and pre-adoptive parent(s). The term "legal guardian(s)" is not included in the definition of parent(s). (3-20-04)

087. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

098. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

109. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

140. P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997", amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

121. Planning. An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

~~**13. Prevention.** Programs, services and activities aimed at preventing child abuse and neglect and severe emotional disturbance. (3-30-01)~~

~~**14. Protective Services.** To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)~~

152. Purchase of Services. Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)

163. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

174. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

185. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

196. Respite Care. Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-30-01)

~~**20. Risk Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-30-01)~~

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

For the purposes of these rules, the following terms are used as defined in Section 013: ()

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Plan. Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

03. Serious Emotional Disturbance (SED). An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and behavior. A disorder ~~shall be~~ is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment ~~shall be~~ is assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment ~~shall~~ requires a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self-harmful behavior; Moods/emotions; or thinking. A substance abuse disorder, ~~or~~ conduct disorder, ~~and/or~~ developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-20-04)()

04. Social Service Block Grant. The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)

05. TAFI. Temporary Assistance to Families in Idaho. (3-18-99)

06. Target Population. Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)

07. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

08. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)

09. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

10. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

11. Unmarried Parents' Services. Unmarried parent(s) services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for all unmarried parent(s) who need such service in relation to their plans for their children and arranging for and ~~for~~ paying for prenatal and confinement care for the well-being of the parent and infant. (~~5-3-03~~)(____)

12. Voluntary Services Agreement. A written and executed agreement between the Department and parent(s) or legal guardian(s) regarding the goal, ~~issues~~ areas of concern, ~~objectives~~ desired results, and task responsibility, including payment. A children's mental health family services plan is the Voluntary Service Agreement. (~~5-3-03~~)(____)

014. -- 019. (RESERVED).

020. GENERAL REQUIREMENTS APPLICABLE TO ALL FAMILY AND CHILDREN'S SERVICES PROGRAMS.

01. Information, Referral and Screening. All residents of the state of Idaho, regardless of the duration of their residency or their income ~~shall be~~ are entitled to receive, upon referral or request: (~~3-30-01~~)(____)

a. Accurate and current information about services to children and families provided through the Department. (3-18-99)

b. Referral to other appropriate public or private services available in the community; and (3-18-99)

c. A screening to determine service needs and safety ~~issues~~ threats that can be addressed through Family and Children's Services. (~~3-18-99~~)(____)

02. Initiating Family and Children's Services. Family and children's services are initiated upon referral for services that the program is legally mandated to provide or after completion of a written voluntary request for services. Efforts ~~shall~~ will be made to identify any Indian children in the family and all possible tribes in which a child may be a member or eligible for membership. (~~3-18-99~~)(____)

03. Individual Authorized to Request Voluntary Services. Requests for voluntary services *shall* must be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. (~~3-18-99~~)(____)

04. Record of Request for Services. The date of referral or request for services *shall* will be documented in the records of the field office. (~~3-18-99~~)(____)

05. Information to Be Provided to Family. Upon referral or application for services, the family services worker *shall* must inform the family that: (3-18-99)

a. They have the right to accept or reject services offered by the Department, except those services imposed by law or by a court order; (3-18-99)

b. Fees may be charged for certain services, and that the parent(s) or legal guardian(s) has financial responsibility for the child in care; (5-3-03)

c. They have the right to pursue an administrative appeal of any decision of Family and Children's Services relating to them, including but not limited to any decision not to provide services or to discontinue planned services; the Department's failure to act upon a referral or request for services within thirty (30) days; or an decision to remove a child from an alternate care placement unless court-ordered or court-authorized. (3-18-99)

021. -- 029. (RESERVED).

030. CORE FAMILY AND CHILDREN'S SERVICES.

The following core services are the state and federally mandated services provided by or through regional Family and Children's Services offices: (3-30-01)

01. Crisis Services. Crisis Services are an immediate response to assure safety when a child is believed to be in imminent danger as a result of child abuse or neglect or to be in imminent danger of causing life-threatening harm to self or someone else due to a serious emotional disturbance. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess risk and place in alternate care, if necessary, to assure safety for the child. (3-30-01)

02. Service Management. Also referred to as case management. The goals of service management are to assure and coordinate family assessment, service planning, treatment and other services, protection of children, planning for permanency, advocacy, review and reassessment, documentation and timely closure of cases. (3-30-01)

03. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive services as a member of the target population for Child Protection, Adoptions, and/or Children's Mental Health Services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (3-30-01)

04. Assessment and Safety/Service Planning Services. Process in which the safety ~~issues~~ threats the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed together by the worker, the family and other interested parties. Each plan will identify a long-term goal, behaviorally specific and measurable ~~objectives~~ desired results, specific tasks which identify who, how, and when the tasks will be completed. (~~3-30-01~~)(____)

05. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse and neglect as well as serious emotional disturbance. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (3-30-01)

06. Court Ordered Services. These services primarily involve court-ordered investigations/assessments of situations where children are believed to be at risk due to child abuse or neglect or a harm to themselves or others due to the presence of a severe emotional disturbance. (3-30-01)

07. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse or neglect or children and youth with a severe emotional disturbance. These out of home placements are arranged for and financed in full or in part by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment ~~shall~~ will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (3-30-01)(____)

08. Community Treatment Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include, but are not limited to: respite care; family preservation; psychosocial rehabilitative services, companion services and day treatment. (3-30-01)

09. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho ~~shall~~ will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement ~~shall~~ will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101 et seq., Idaho Code, the "Interstate Compact on the Placement of Children" and Section 66-1201 et seq., Idaho Code, the "Interstate Compact on Mental Health." Placements ~~shall~~ must be in compliance with all state and federal laws. (3-30-01)(____)

10. Independent Living. The assessment, planning, and provision of services to eligible youth to promote self-reliance and successful transition to adulthood. Eligibility requirements for Independent Living services include: youth must be between fifteen (15) and twenty-one (21) years of age; youth's care must be the responsibility of the Department or tribal agency as established by a court order or voluntary agreement with the youth's family; and placed in foster care or similar setting for ninety (90) consecutive days. Once established, a youth's eligibility is maintained up to their twenty-first birthday, regardless of whether they continue to be the responsibility of the Department, tribe, or are in foster care. (3-30-01)

11. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

12. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include but are not limited to: (3-30-01)

- a. Child care licensing; (3-30-01)
- b. Day care licensing; (3-30-01)
- c. Community development; (3-30-01)
- d. Contract development and monitoring; and (3-30-01)
- e. Pre-authorization of care. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to assure timely permanency for children and to protect the rights of children, their families and their tribes. (3-30-01)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with their family, to finalize a permanent plan, or prevent a seriously emotionally disturbed child from having to move to a more restrictive setting. Efforts must be made as follows and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable: (5-3-03)

- a. Efforts to prevent or eliminate the need for a child to be removed from his home; and (5-3-03)
- b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)
- c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. Active Efforts. For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

03. ICWA Preferences. If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

04. Least Restrictive Setting. Efforts ~~shall~~ will be made to assure that any child in the Department's care, especially those children in care due to an emotional or behavioral disturbance, reside in the least restrictive, most family-like setting possible. Placement ~~shall~~ will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. (~~5-3-03~~)(____)

05. Legal Requirements for Indian Children. In the case of an Indian child, notice of the pending proceeding ~~shall~~ must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement. (~~5-3-03~~)(____)

06. Visitation for Child's Parent(s) or Legal Guardian(s). Visitation arrangements ~~shall~~ must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (~~5-3-03~~)(____)

07. Notification of Change in Placement. Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA. (5-3-03)

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) ~~shall~~ must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (~~5-3-03~~)(____)

10. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act. (3-18-99)

11. Compliance with Requirements of the Multiethnic Placement Act and Interethnic Adoption Provisions. (3-30-01)

12. Family Decision Making and Plan Development. (3-30-01)

a. A family plan ~~shall~~ will be completed within thirty (30) days of the date the case was opened. (~~3-30-01~~)(____)

b. Families ~~shall~~ will be given ample opportunity to participate in the identification of ~~issues~~ areas of concern, their strengths and developing service ~~objectives~~ goals and tasks. The family plan and any changes to it ~~shall~~ must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal ~~shall~~ will be documented on the plan. (~~3-30-01~~)(____)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. ASFA Placement Preferences. The following placement preferences will be used when recommending and making permanency decisions: (3-30-01)

a. Return home if safe to do so; (3-30-01)

b. Adoption or legal guardianship by a relative; (3-30-01)

c. Adoption or legal guardianship by kin; (3-30-01)

d. Adoption or legal guardianship by non-relative; (3-30-01)

e. Other planned permanent placement such as long-term foster care. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

240. SIX MONTH REVIEWS CONDUCTED BY THE DEPARTMENT.

Unless a judicial review occurs at the end of a six (6) month period in a Child Protective Act placement or other out of home placement including placements under the Children's Mental Health Services Act, placements of children where the Department is the child's guardian, the Department ~~shall~~ will conduct an individual family case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency and well-being of the child. (~~5-3-03~~)(____)

01. Notice of Six Month Review. The parent(s) or legal guardian(s), foster parents of a child and any preadoptive parent(s) or relative(s) providing care for the child and an Indian child's tribe, if appropriate, are to be

provided with notice of and an opportunity to be heard in the six (6) month review. This ~~shall~~ must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party solely to the review on the basis of such notice and opportunity to be heard. Participants have the right to be represented by the individual of their choice. (5-3-03)(____)

02. Procedure in the Six Month Review. The parties ~~shall~~ will be given the opportunity for face-to-face discussion including attending, asking questions and making statements. (3-30-01)(____)

03. Members of Six Month Review Panel. The review team ~~shall~~ must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent(s) or legal guardian(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes and citizens qualified by experience, professional background or training. Members of the panel ~~shall~~ will be chosen by the regional director and receive instructions from the Family and Children's Services Program Manager or ~~their~~ his designee to enable them to understand the review process and their roles as participants. (5-3-03)(____)

04. ~~Issues Considered~~ Considerations in Six Month Review. Whether conducted by the court in a review hearing or a Department review panel, under State law, Federal law and regulation, at least each of the following must be addressed: (5-3-03)(____)

- a. Determine the extent of compliance with the family services plan; (5-3-03)
- b. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-3-03)
- c. Review compliance with the Indian Child Welfare Act, when applicable; (5-3-03)
- d. Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-3-03)
- e. Project a likely date by which the child may be returned and safely maintained at home or placed for adoption, legal guardianship or other permanent placement. (5-3-03)

05. Recommendations and Conclusions of Six Month Review Panel. Following the review, written conclusions and recommendations ~~shall~~ will be provided to all participants, subject to Department safeguards for confidentiality. The decision ~~shall~~ must also provide appeal rights. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the Regional Family and Children's Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: (5-3-03)(____)

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (3-18-99)

02. Voluntary Placement. Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child with serious emotional disturbance in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify ~~issues~~ areas of concern, goals, ~~objectives~~ desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s). A contract between the Department and the service provider, if applicable, must also be in effect.

Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds.

~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

405. ALTERNATE CARE CASE MANAGEMENT.

Case management ~~shall~~ must continue while the child is in alternate care and ~~shall~~ must ensure the following:

~~(3-18-99)~~(____)

01. Preparation for Placement. Preparing a child for placement in alternate care ~~shall be~~ is the joint responsibility of the child's family, the child (when appropriate), the family services worker and the alternate care provider.

~~(3-18-99)~~(____)

02. Information for Alternate Care Provider. The Department and the family ~~shall~~ must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including:

~~(3-30-01)~~(____)

a. Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems and any other pertinent health information concerning the child;

(3-18-99)

b. The name of the child's doctor; (3-18-99)

c. The child's current functioning and behaviors; (3-18-99)

d. The child's history and past experiences and reasons for placement into alternate care; (3-30-01)

e. The child's cultural and racial identity; (3-18-99)

f. Any educational, developmental, or special needs of the child; (3-18-99)

g. The child's interest and talents; (3-18-99)

h. The child's attachment to current caretakers; (3-18-99)

i. The individualized and unique needs of the child; (3-18-99)

j. Procedures to follow in case of emergency; and (3-18-99)

k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

03. Consent for Medical Care. Parent(s) or legal guardian(s) ~~shall~~ must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent ~~shall~~ must be documented in the family case record.

~~(5-3-03)~~(____)

04. Financial Arrangements. The family services worker ~~shall~~ must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted.

~~(3-18-99)~~(____)

05. Contact with Child. The family, the family services worker, the alternate care provider and the child, if of appropriate developmental age, ~~shall~~ must establish a schedule for frequent and regular visits to the child by the family and by the family services worker or designee.

~~(3-18-99)~~(____)

- a. Face-to-face contact in the alternate care setting with the child by the family services worker must occur at least monthly or more frequently depending on the needs of the child ~~and~~ or the provider, or both, and the stability of the placement. (3-30-01)(____)
- b. The Department ~~shall~~ will have strategies in place to detect abuse or neglect of children in alternate care. (3-18-99)(____)
- c. Regular contact with children placed in intensive treatment facilities, in or out-of-state, ~~shall~~ must occur at a minimum of once every ninety (90) days. (3-30-01)(____)
- d. Frequent and regular contact between the child and parents and other family members ~~shall~~ will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. (3-18-99)(____)
- e. When a child is placed in foster care ~~at a substantial distance from home or out-of-state, a face-to-face visit with the child in the child's placement by the worker is required at least once every twelve (12) months in another state, a Department family services worker must maintain at least monthly contact with the child and family with whom he has been placed as long as the state of Idaho has custody of the child. The supervising agency in the state where the child is living is required to maintain monthly, face-to-face contact with the child and the family and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children.~~ (5-3-03)(____)

06. Discharge Planning. Planning for discharge from alternate care into family services that follow alternate care ~~shall~~ will be developed with all concerned parties. Discharge planning ~~shall~~ will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-18-99)(____)

07. Transition Planning. Planning for discharge from alternate care into a permanent placement ~~shall~~ will be developed with all concerned parties. Discharge planning ~~shall~~ will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-18-99)(____)

08. Financial and Support Services. As part of the discharge planning, Departmental resources ~~shall~~ will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-18-99)(____)

406. -- ~~41921.~~ (RESERVED).

~~**420. OTHER SOURCES OF ALTERNATE CARE — CASEY FAMILY PROGRAM, BOISE DIVISION.**
Children may be referred to the Casey Family Program, Boise Division for placement when it is determined that reunification of the family is not anticipated to be possible. Once the child has been accepted into the Casey Family Program, Boise Division, the Program will provide direct case management services pursuant to a contract with the Division of Family and Community Services with final responsibility for decision-making continuing to rest with the Department. Children placed with the Casey Family Program shall continue to be eligible for all Department programs, and regional and Casey Family staff shall combine resources to the extent possible to serve these children in the most effective manner.~~ (3-20-04)

~~**421. OTHER SOURCES OF ALTERNATE CARE — PLACEMENT OF UNWED MOTHERS AT BOOTH MEMORIAL HOME.**
Referrals may be made to Booth Memorial Home for both outpatient and residential services for unwed pregnant women under the age of twenty-one (21), whose determined needs for outpatient or alternate care placement cannot be met by less restrictive means.~~ (3-30-01)

~~**01. Referral Criteria.** For referral to this program, the mother shall:~~ (3-30-01)

~~**a.** Be unmarried;~~ (3-18-99)

- ~~b. Have a high-risk pregnancy; (3-18-99)~~
- ~~e. Be under the age of eighteen (18) at the time of referral for residential services, and up to the age of twenty-one (21) for outpatient referrals, who are enrolled in the educational component of the program; (3-30-01)~~
- ~~d. Be a resident of the state of Idaho; (3-18-99)~~
- ~~e. Lack other community resources that would meet her needs in the most home-like environment; and (3-18-99)~~
- ~~f. Be willing to enroll in the educational program provided by Booth if the mother has not completed high school or a GED. (3-18-99)~~
- 02. Exclusions from Referral. Individuals not appropriate for referral to Booth include: (3-18-99)**
 - ~~a. Those who are a danger to self or others; (3-18-99)~~
 - ~~b. Those who could be better served by other levels of care, such as foster care or local board and room care; or (3-18-99)~~
 - ~~e. Those whose problems are of such levels that they need the structure of an institutional placement. (3-18-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

428. CUSTODY AND PLACEMENT.

The child's placement and care are the Department's responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative's home. (3-30-01)

01. Interstate Placements. In interstate placements, a child may be placed with an approved unlicensed relative when delaying the placement would be harmful to the child's well-being. In those cases, a subsequent request for foster care licensure will be made through the Interstate Compact on the Placement of Children. ()

02. Intrastate Placements That Become Interstate Placements. If a foster care placement that was initially intrastate becomes an interstate placement because the family with whom the child is placed relocates to another state, a request for foster care licensure will be made through the Interstate Compact on the Placement of Children immediately upon the decision to move the child. If the state to which the family has moved accepts the family's Idaho foster care license as effective, the placement is considered licensed until a determination is made that the family is in compliance with the licensing and other applicable laws of the state to which the family has moved. ()

(BREAK IN CONTINUITY OF SECTIONS)

445. DENTAL CARE.

~~Every~~ Each child age ~~two~~ three (23) who is placed in alternate care ~~shall~~ must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist. (3-18-99)()

(BREAK IN CONTINUITY OF SECTIONS)

451. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.

No ~~Departmental~~ employee or foster parent(s) ~~shall~~ is allowed to sign for any foster child's driver's license or permit without written authorization from the ~~Regional Director Family and Children's Services Program Manager~~. Any Department employee or foster parent signing for a foster child's driver's license or permit without the ~~Regional Director's~~ approval of the Family and Children's Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. (5-3-03)(____)

01. Payment by Department. The Department may make payments for driver's training, licenses and permits for children in the Department's guardianship when obtaining a driver's license is part of an older teen's Independent Living Plan. (3-30-01)

02. Payment by Parent(s) or Legal Guardian(s). The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)

452. -- 479. (RESERVED).

480. ALTERNATE CARE LICENSURE.

All private homes and facilities providing care for children ~~pursuant to~~ under these rules ~~shall~~ must be licensed in accordance with ~~Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Governing Standards for Child Care Licensing,"~~ unless foster care placement of an Indian child is made ~~by the court~~ with a foster home licensed, approved or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

485. PROFESSIONAL FOSTER CARE.

Placement in professional foster care for children who require professional care for clinically diagnosed emotional, behavioral, ~~and/or~~ physical problems ~~shall~~ must be based upon the documented needs of each child, including the inability of less restrictive settings to meet the child's needs and a determination that the child would require a more restrictive setting if professional foster care were not available. (3-18-99)(____)

01. Qualifications. At least one (1) parent ~~shall~~ must possess ~~a master's or higher degree in a human service field or~~ a bachelor's degree ~~with or~~ three (3) years of experience in a human service delivery setting or be otherwise licensed or certified to provide specialized social and medical care to children, and neither parent ~~shall~~ can be a Department employee. (3-18-99)(____)

02. Payment. Payment ~~shall~~ will be made through a professional services contract with the Department for a basic rate and cost for social services total of one thousand dollars (\$1,000) per month per child. (3-18-99)(____)

03. Treatment Plan. The professional foster parent(s) ~~shall~~ must implement a treatment plan, developed in conjunction with the child's family services worker, for each child in their care. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

554. RESPONSE PRIORITIES.

The Department ~~shall~~ must use the following statewide standards for responding to allegations of abuse, neglect, or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response

standards ~~shall~~ must be documented in the family's case file with a description of action taken, ~~which shall and must~~ be reviewed and signed by the ~~Child Protective~~ Family and Children's Services Supervisor. (3-18-99)(____)

01. Priority I. The Department ~~shall~~ must respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement ~~shall~~ must be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child ~~shall~~ must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-30-01)(____)

02. Priority II. A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement ~~shall~~ must be notified within twenty-four (24) hours. The child ~~shall~~ must be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals which involve ~~issues~~ concerns of abuse or neglect. (3-18-99)(____)

03. Priority III. A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no abuse or neglect by parent(s) or legal guardian(s). A family services worker ~~shall~~ must respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral. (3-20-04)(____)

04. Notification ~~to Referent~~ of the Person Who Made the Referral. The Department ~~of Health and Welfare, Family and Children's Services,~~ ~~shall~~ must notify the ~~reporting individual~~ person who made the child protection referral of the receipt of the referral within five (5) days. (3-18-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

558. COMMUNITY RESOURCES.

The Department ~~shall~~ will provide information and referral to community resources or may offer preventative services to the family. Information and referral services enable individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-18-99)(____)

559. CHILD PROTECTION ~~RISK~~ IMMEDIATE SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's ~~risk~~ immediate safety and comprehensive assessments ~~shall~~ must be conducted in a standardized format and ~~shall~~ must utilize statewide ~~risk~~ assessment and multi-disciplinary team protocols. The assessment ~~shall~~ must include contact with the child or children involved and the immediate family and a records check for history with respect to child protection issues. (3-30-01)(____)

01. Interview of a Child. The interview of a child concerning a child protection report ~~shall~~ must be conducted: (3-18-99)(____)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including ~~but not limited to~~ multiple interviews; (3-18-99)(____)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview ~~shall~~ must:

(3-18-99)(____)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the ~~case~~ family services worker and his/~~her~~ supervisor ~~shall~~ must be given to ensure the family has a contact for questions and concerns that may arise following the visit;

(5-3-03)(____)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report ~~during the course of the assessment of child abuse or neglect.~~

(3-18-99)(____)

03. Collateral Interviews. Any assessment of an abuse or neglect report ~~shall~~ must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews ~~shall~~ will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission.

(5-3-03)(____)

04. Completion of a Comprehensive ~~Risk~~ Assessment. An Immediate Protection/Safety Plan will be completed on each referral assigned for assessment of abuse ~~and/or neglect, or both.~~ When there are findings of moderate or higher risk and a case remains open, a comprehensive ~~risk~~ assessment must be completed within thirty (30) days of initial contact with the child of concern.

(3-30-01)(____)

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the ~~risk safety~~ assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include, ~~but are not limited to:~~

(3-18-99)(____)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of ~~Referent~~ the Person Who Made the Referral. The ~~referent shall be~~ Department must notified notify the person who made the child protection referral when the risk assessment has been completed.

(3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

565. PETITION UNDER THE CHILD PROTECTIVE ACT.

If any incidence of child abuse, neglect, or abandonment is substantiated through ~~the risk an immediate safety or comprehensive assessment, or both,~~ or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department ~~shall~~ must request the prosecuting attorney to file a Child Protective Act petition.

(3-30-01)(____)

566. COOPERATION WITH LAW ENFORCEMENT.

The Department ~~shall~~ must cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (3-18-99)(____)

567. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.

Where no other community resources are available and when ordered by the district courts, the Department ~~shall~~ will, for a fee of thirty-five dollars (\$35) per hour, conduct ~~risk~~ immediate safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (3-30-01)(____)

01. Requests From Private Attorney. If a parent's attorney requests ~~a risk an immediate safety or comprehensive assessment, or both,~~ and a report of findings regarding the fitness of a parent, the attorney ~~shall~~ must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (3-18-99)(____)

02. Conduct of the Assessment. In conducting the assessment, the family services worker ~~shall~~ must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family ~~shall~~ must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-18-99)(____)

03. Report to Court. The family services worker ~~shall~~ will provide a report only to the Magistrate judge who ordered the assessment, and ~~shall~~ must use the Department's format for the assessment of need. The report ~~shall~~ must describe what was observed about the home conditions and the care of the child(ren). (3-18-99)(____)

04. Department Clients. If the family is or has been a client of the Department, disclosure of information ~~shall~~ must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Protection of Department Records." (3-18-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

642. ACCESS TO SERVICES.

The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (3-30-01)

01. Local Resources and Plan Development. Children with serious emotional disturbances and their families may have access to local resources and services which do not require placement outside their home into alternate care. A plan will be developed between the Department, the parent(s) or legal guardian(s), the child, if appropriate, and the service provider. This plan will be specific, measurable and ~~objective realistic~~ objective realistic in the identification of the goal(s), relevant ~~issues areas of concern, objectives and outcomes and desired results.~~ (5-3-03)(____)

02. Payment for Treatment. When parent(s) or legal guardian(s) request Department payment for a child's treatment, a service agreement must be negotiated and signed by the parent(s) or legal guardian(s) and the Department. A referral will be made to Child Support Services to collect payment for the cost of out-of-home care. (5-3-03)

03. Involuntary Placement Under the Children's Mental Health Services Act. When a seriously emotionally disturbed child presents a significant danger to himself or herself and/or to others and the child's parent(s) or legal guardian(s) will not consent to a voluntary placement of the child, the child can be placed involuntarily through a court order. Involuntary Treatment Orders are limited to one hundred twenty (120) days and can be changed to a voluntary placement upon the request of the consenting parent(s) or legal guardian(s). At the end

of one hundred twenty (120) days, a judicial redetermination is required to extend the involuntary treatment order for an additional set period of time. (5-3-03)

04. Use of Public Funds and Benefits. Public funds and benefits will be used to provide services for children with serious emotional disturbances and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources *shall will* be provided to minimize the need for institutional or other residential placement. Services *shall will* be individually planned with the family to meet the unique needs of each child and family. Services *shall will* be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the child. (~~3-20-04~~)()

(BREAK IN CONTINUITY OF SECTIONS)

701. SERVICES TO BE PROVIDED IN ADOPTIONS.

In addition to the core family and children's services provided in accordance with these rules, the Department *shall* must assure provision of the following: (~~3-30-01~~)()

01. Response to Inquiries. Written or personal inquiries from prospective adoptive families *shall must* be answered within two (2) weeks. (~~3-18-99~~)()

02. Pre-Placement Child/Family Assessment. An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-18-99)

03. Compliance with Multi-Ethnic Placement Act and Interethnic Adoption Provisions. Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic Adoption Provisions, if the child is not an Indian. (3-30-01)

04. (Pre-Placement) Home Study. An adoptive home study to ensure selection of an appropriate adoptive home. (3-18-99)

05. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parents and assisting the child with the transition into an adoptive home. (5-3-03)

06. Technical Assistance. Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-18-99)

07. Adoption Assistance. A determination of eligibility for adoption assistance *shall must* be made for each child placed for adoption through the Department prior to the finalization of his adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test *shall may* be applied to the adoptive family's income or resources. Once eligibility is established, the Division *shall will* negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. (~~3-18-99~~)()

08. Period of Support Supervision. Once a child is placed with an adoptive family, a period of support and supervision by the Department *of lasting* at least six (6) months ~~shall occur~~ must be completed prior to the finalization of the adoption. If the child has been a foster child placed with the family for a period of at least ~~one~~ six (6) year months, the family may submit a written request to the Department's Family and Children's Services Program Manager to waive the standard support reduce the supervisory period to a minimum of three (3) months. (~~3-30-01~~)()

09. Post Adoption Services. Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements, ~~(whether from Idaho or from another state),~~ are

eligible for any services available to Idaho children. International adoptees residing in Idaho are also eligible for any services available to Idaho children ~~pursuant to~~ under the Inter-Country Adoption of 2000 (P.L.106-279). Children with ~~adoption assistance~~ either IV-E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state ~~shall~~ will serve as a formal application for services in Idaho. Applications for Medicaid are made through ~~Central Office~~ the Department in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children."~~(5-3-03)~~()

702. SERVICES TO BE PROVIDED IN LEGAL GUARDIANSHIPS.

In addition to the family services provided in accordance with these rules, the Department ~~shall~~ will provide the following: ~~(5-3-03)~~()

01. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). (5-3-03)

02. Licensure. Potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)

03. Financial Assistance to Obtain Guardianship. For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)

04. Eligibility for Guardianship Assistance. A determination of eligibility for guardianship assistance ~~shall~~ must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is ~~determined solely on the basis of~~ based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test ~~shall~~ may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. ~~(5-3-03)~~()

05. Guardianship Assistance Agreement. The region ~~shall~~ will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. ~~(5-3-03)~~()

06. Revocation of Legal Guardianship. Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)

07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s). If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the military. (5-3-03)

08. Retroactive Benefits. Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

770. ADOPTIVE HOME STUDIES.

Pre-placement home studies for Department adoptions, independent, relative and step-parent adoptions ~~shall~~ must document the following: (3-20-04)(____)

01. Residence. References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (3-18-99)

02. Verification of Ages of Adopting Parent(s). Legal verification that the person(s) adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, ~~shall~~ must be accomplished by: (3-20-04)(____)

a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)

b. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. (3-30-01)

c. If verifying documentation is not available, the report ~~shall~~ must indicate the date and place of birth and reason for lack of verification. (3-18-99)(____)

03. Medical ~~Examination~~ Statement. A medical ~~examination, with the medical report form signed and dated by the examining physician~~ statement for each applicant, signed by a qualified medical professional, within the twelve (12) month period prior to application to be an adoptive parent, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child. (3-18-99)(____)

04. Photograph. A photograph of the adopting family. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

830. ~~FEES FOR ADOPTIONS THROUGH THE DEPARTMENT APPLICATION FEE.~~

The adoption application fee covers the costs of processing the adoption application and does not guarantee that the applicant family will receive a child for adoption. The application fee is non-refundable. Money collected through the Department's adoption program may be utilized to pay state adoption assistance payments for children with special needs, ~~purchase of and pay the~~ service fees, recruitment costs, and placement fees for private agencies serving children who have special needs. ~~Families who are not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the Regional Family and Children's Services Program Manager for waiver of the fees.~~ (3-20-04)(____)

831. HOME STUDY, SUPERVISORY REPORTS, AND REPORTS OF THE COURT FEES.

A family who cares for a child or children with special needs through the Department foster care program, who is not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the regional Family and Children's Services Program Manager for a waiver of some or all of the fees. If a family who receives a waiver of the pre-placement home study fee uses that home study to pursue adoption of a child not in the Department's custody, the Department will rescind the waiver and the family will be expected to pay the Department for the full cost of the study. (____)

831. FEE SCHEDULE - ADOPTIONS THROUGH DEPARTMENT.

| TABLE 83-42 | |
|--------------------------------------------------------------------------|-----------------|
| Service | Fee |
| General Information/Adoption Inquiries | No Charge |
| Health and Welfare Application: | |
| Couple | \$50 |
| Single Parent | \$25 |
| Second Placement or Reapplication | \$25 |
| <i>Criminal History Check for each adult in the home</i> | \$34 |
| Pre-placement Home Study - Payment due at time of study or per agreement | \$450 |
| Report to Court under the Adoption Act | \$150 |
| Second Placement | \$150 |
| Placement Supervision Fee - Charged at the time of placement | \$300 |
| Closed Adoption Home Study/Court Report Retrieval Fee | \$50 |
| Report to the Court Under the Termination Act | \$40 per hour |

(3-18-99)()

(BREAK IN CONTINUITY OF SECTIONS)

860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.

Following the adoptive placement, ~~there shall be a supervisory~~ period of support and supervision by the Department lasting at least six (6) months ~~before must be completed prior to the initiation finalization of legal the adoption proceedings.~~ In situations where a foster family has a significant relationship with a child and the child has been placed in their home for at least the last ~~twelve six (126)~~ months, the supervisory period may be reduced to a minimum of three (3) months. The family services worker shall will make scheduled visits to the home at least monthly during this period to assist the child and the family in their adjustment to each other and will update the child's permanent record by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the ~~State Adoption~~ Permanency Program Specialist, the Department shall will request the prospective adoptive parent(s) contact their attorney. The regional family services worker shall will provide the attorney with the necessary documentation to file the petition for adoption. (3-20-04)()

861. PROGRESS REPORTS.

Progress reports shall will be prepared regularly and shall will be based on the family services worker's findings. (3-18-99)()

01. Initial and Subsequent Reports. The first progress report must be made within two (2) weeks after placement, and subsequent progress reports must be made at intervals not to exceed thirty (30) days. These reports shall will include: (5-3-03)()

- a. The family services worker's observation of the child and the prospective adopting parent(s), with emphasis on: (5-3-03)
- b. Special needs/circumstances of child(ren) at time of placement; (3-18-99)
- c. Services provided to child(ren) and family during report period; (3-18-99)

- d. Services to be provided to child(ren) and family; (3-18-99)
- e. General appearance and adjustment of child(ren) during report period (may include eating, sleep patterns, responsiveness, bonding); (3-18-99)
- f. School/day care/day treatment program adjustment; (3-18-99)
- g. Health/developmental progress, medical practitioner information; (3-18-99)
- h. Whether the child(ren) have been accepted for coverage on family's medical insurance, when coverage begins, and whether there will be any limitations/exclusions; (3-30-01)
- i. Family's adjustment to adoptive placement; (3-18-99)
- j. Whether respite care is a need for the family; (3-18-99)
- k. Changes in family situation or circumstances; (3-18-99)
- l. Areas of concern during report period as addressed by both child(ren) and adoptive parent(s); and (5-3-03)
- m. Date of next required six (6) month review or twelve (12) month permanency hearing; (3-18-99)

02. Monthly Foster Care Payments -- Pre-Adoptive Placement. To receive Title IV-E monthly foster care payments during the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license. (3-20-04)

~~**03. Adoptive and Foster Home Studies.** A foster home evaluation completed by the Department of Health and Welfare or a licensed children's adoption agency forms the foundation of the pre-placement adoptive homestudy. (3-30-01)~~

043. Final Progress Report. The final report *shall* must include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. The family's attorney who will be handling the finalization of the adoption should be identified. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement *shall* must be brought to the attention of the Department. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

900. ADOPTION ASSISTANCE.

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Service's, the Division *shall* will respond with a determination of the child's eligibility within forty-five (45) days. (3-18-99)(____)

01. Determination of Eligibility for Title IV-E Adoption Assistance. The Bureau of Family and Children's Services *shall* will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-3-03)(____)

a. Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria both at the time of removal from his home and in the month the adoption petition is filed. (5-3-03)

i. If the child is removed from his home pursuant to the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-3-03)

ii. If the child is removed from the home pursuant to a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-3-03)

b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care is not relevant. (5-3-03)

c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which lead to the removal of the child from his home; (5-3-03)

ii. At the time of the voluntary placement or relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-3-03)

d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of

special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

02. ~~Factors Considered~~ Special Needs Criteria. The definition of special needs includes the following factors: ~~(3-18-99)~~(____)

a. The child cannot or should not be returned to the home of the parents; and (3-18-99)

b. The child has a physical, mental, emotional or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or (3-18-99)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is a member of a sibling group that must not be placed apart; and (5-3-03)

e. State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)

03. Determination of Eligibility for State Funded Adoption Assistance. Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. ~~(5-3-03)~~(____)

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho ~~shall be~~ is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E ~~or state-funded~~ adoption assistance benefits. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, ~~shall~~ will be considered in determining the amount and type of support to be provided. Assistance may include the following: ~~(3-18-99)~~(____)

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Families applying for Nonrecurring Adoption Reimbursement separate from the regular Adoption Assistance program must submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the finalization of the child's adoption. Families applying for Nonrecurring Adoption Expenses Reimbursement on behalf of a child who is adopted through an international adoption must submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the family's departure to the foreign country and the child's adoption in the foreign country. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (5-3-03)

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount ~~shall~~ must not exceed the rate for family foster care which would be made if the child were in a family foster home in Idaho. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. For children who are currently eligible for Personal Care Services (PCS), the professional foster care rate may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits ~~shall~~ will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (5-3-03)(____)

03. Title XIX -- Medicaid Coverage. Any ~~special needs child for whom there is in effect with special needs who has~~ an adoption assistance agreement ~~shall in effect is~~ also ~~be~~ eligible for medical coverage ~~under Medicaid~~. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage ~~shall~~ must apply to the Idaho Health Insurance Premium Payment (HIPP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance ~~and other resources have been exhausted~~ has reached its benefit limit. ~~Coverage may begin while the family meets the child's yearly deductible under the family's health care policy. Coverage may include routine medical costs or may be limited to costs related to specific medical problems of the child. For children who meet the definition of special needs at Subsection 900.02 of these rules and whose family has health insurance, Medicaid shall not be available for treatment of that specific disability until such time as the specific disability for which the child is known to be at risk becomes evident and treatment is medically necessary. All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services.~~ Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. (5-3-03)(____)

04. Title XX -- Social Services. Any child with special needs who has an Adoption Assistance Agreement ~~shall~~ is also be eligible for state-authorized Title XX - Federal Social Services Block Grant funded services. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

923. DISRUPTION OF INTERNATIONAL ADOPTIONS.

The Intercountry Adoption Act of 2000 (P.L. 106-279) requires that each state make an annual report of children who were adopted from other countries who enter state custody guardianship as a result of ~~the disruption of a placement for adoption or termination of the parental rights of the adoptive parent and~~ the dissolution of ~~an~~ the adoption. The report will include the name of the agency who handled the placement or the adoption, the plans for the child, and the reasons for the disruption or dissolution. Each region will collect this information and send it to the Bureau of Family and Children's Service Adoptions Department's Permanency Program Specialist in January of each year. (5-3-03)(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING CHILD CARE LICENSING

DOCKET NO. 16-0602-0601

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 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), 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 18, 2006.

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 Child Care Licensing rules are being amended to better protect young children living in licensed foster homes and children's residential care facilities. When the home or facility has a swimming pool, hot tub, pond, or other bodies of water on the property, there must be additional safety devices and barriers in place to keep the children safe.

Children placed in foster homes or residential care facilities currently must have a background check upon turning eighteen (18). These young adults will no longer be required to be fingerprinted and have criminal history and background checks when they stay in the same home or facility after turning eighteen (18). The Department will still be able to require these checks at any time, but they will not be automatically required. Also, the foster parents' child who turns eighteen (18) will not be required to have a criminal history check unless he moves away from the home and returns.

The rules on adoption are being updated to address the Multiethnic Placement Act, that prohibits the delay or denying placement of any child on the basis of race, color, or national origin. Other changes were made for plain language consistency with current Department practice.

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

No fees or charges are being imposed or increased as result of this rulemaking.

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

There will be minimal savings to the Department by no longer requiring the Department's criminal history and background checks for young adults in foster home care or children's residential care facilities who turn eighteen (18).

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are necessary to protect children living in licensed foster care or children's residential care facilities.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 Wednesday, October 25, 2006.

DATED this 23rd day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0602-0601

000. LEGAL AUTHORITY.

Pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, ~~56-1004A~~, and 56-1005(8), Idaho Code, the Idaho Legislature has granted authority to the Department and Board of Health and Welfare to adopt and enforce rules governing standards for licensure or certification of foster homes, children's agencies and children's residential care facilities. ~~(4-11-06)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

- 01. Idaho Statutes.** The following are the Idaho Statutes incorporated by reference in this chapter of rules; (3-30-01)
- a.** Accreditation of Secondary Schools - Standards for elementary schools, Section 33-119, Idaho Code. (3-30-01)
- b.** Adoption Statutes. Sections 16-1501 through 16-1512, Idaho Code. (3-30-01)
- c.** Child Labor Laws. Sections 44-1301 through 44-1308, Idaho Code. (3-30-01)
- d.** Termination of Parental Rights. Sections 16-2001 through 16-2015, Idaho Code. (3-30-01)
- e.** Residential Schools. Section 39-1207, Idaho Code. (3-30-01)
- 02. Uniform Fire Code.** The Uniform Fire Code as outlined by Section 41-253, Idaho Code. The addition for the year prior to the issuance of the license ~~shall~~ will be used. Published by Western Fire Chiefs Association and International Conference of Building Officials. A copy is available at any Idaho State Library. ~~(3-30-01)(_____)~~
- 03. Uniform Building Code.** The Uniform Building Codes as outlined in Section 39-4109, Idaho Code. The addition for the year prior to the issuance of the license ~~shall~~ will be used. Published by International Conference of Building Officials. A copy is available at any public library in Idaho. ~~(3-30-01)(_____)~~
- 04. Federal Laws and Regulations.** ~~(3-30-01)(_____)~~
- a.** Immigration and Naturalization Service, Title 8 CFR 204.3.c INA 101.b F1994. (3-30-01)

- b.** Indian Child Welfare Act, PL 95-608, 25 USC, 1901 - 1963. (3-30-01)
- c.** Multiethnic Placement Act (MEPA), P.L. 103-382 and P.L. 104-188 ()
- 05.** **Occupational Safety Health Act (OSHA).** A copy of OSHA may be obtained at the Idaho Industrial Commission, 317 Main Street., P.O. Box 83720, Boise, Idaho, 83720-0041. (3-30-01)
- 06.** **Crib Safety.** Consumer Product Safety Commission, Crib Safety Tips can be found on the Internet at, <http://www.cpsc.gov/cpscpub/pubs/cribs.html>. (3-30-01)
- 07.** **National Research Council.** National Research Council, Internet address, www.nas.edu/nrc. National Academy of Sciences, 2101 Constitution Ave., N.W., Washington, DC 20418. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

008. —~~009.~~ (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for providers who are licensed or certified under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, “Rules Governing Mandatory Criminal History Checks,” with the exception of those individuals described in Subsection 009.04 of these rules. ()

02. When Certification or License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to certification or licensure. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, “Rules Governing Mandatory Criminal History Checks.” ()

03. Applicants and Providers Subject to Criminal History Check Requirements. The following applicants and providers must receive a criminal history and background check: ()

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. ()

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. ()

c. Children’s Agency Facility Staff. The criminal history and background check requirements for a children’s agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ()

d. Children’s Residential Care Facility Staff. The criminal history and background check requirements for a children’s residential care facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ()

e. Children’s Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children’s therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. ()

f. Day Care Facility Staff. The criminal history and background check requirements applicable to licensed day care providers are found in Section 109 of these rules and in Section 39-1105, Idaho Code. ()

g. Licensed Foster Care Home. The criminal history and background check requirements applicable

to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. ()

04. Exceptions to Criminal History and Background Checks. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. ()

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. ()

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. ()

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who is a permanent resident of a licensed foster home or a licensed residential facility. ()

(BREAK IN CONTINUITY OF SECTIONS)

404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.

All applicants for a foster care license and other adult members of the household ~~shall~~ must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," and the following requirements: (3-30-01)()

01. Required Procedures. Each applicant for a foster home license, and any other adult member(+) of the household, ~~shall~~ must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code ~~and in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"~~. (3-30-01)()

02. Change in Household Membership. By the next working day after another adult begins residing in a licensed foster home, a foster parent ~~shall~~ must notify the children's agency of the change in household membership and assure that the new adult member of the household ~~shall~~ will participate in a criminal history and background checks as required by Section 39-1211(4), Idaho Code ~~and in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"~~. (3-30-01)()

03. Foster Parent's Child Turns Eighteen. A foster parent's child who turns eighteen (18) and continues to live in the home is not required to have a criminal history and background check. ()

a. If the adult child moves out of the foster parent's home for longer than ninety (90) days and returns to live in the licensed foster home as a permanent resident, he must complete a criminal history and background check within fifteen (15) days of his return. ()

b. If the adult child leaves the foster home for the purpose of higher education or military service, and returns for less than ninety (90) days, he is not considered to reside in the licensed foster home and is not required to complete a criminal history and background check. He cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for ninety (90) days or longer, he must complete a criminal history and background check within fifteen (15) days. ()

c. If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). ()

04. Criminal History and Background Check at Any Time. The Department retains the authority to require a criminal history and background check at any time on individuals who are permanent residents of a licensed foster home. ()

(BREAK IN CONTINUITY OF SECTIONS)

430. CHILD CARE AND SAFETY REQUIREMENTS.

The property, structure, premises, and furnishings of a foster home ~~shall~~ **must** be constructed and maintained in good repair, in a clean condition, ~~and~~ free from safety hazards and dangerous machinery and equipment ~~accessible to children~~. Areas and equipment that present a hazard to children ~~in care shall be fenced~~ must not be accessible by children. (3-30-01)()

01. Pools, Hot Tubs, Ponds, and Other Bodies of Water. Any licensed foster home with a body of water on or adjacent to their property must provide the following safeguards: ()

a. Around any body of water, a foster child must have constant adult supervision comparable with the child's age, physical ability, and developmental level; ()

b. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or ()

c. If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; ()

i. Pool or hot tub covers must be completely removed when in use; ()

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; ()

iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and ()

d. Exterior ladders on above ground pools must be removed when the pool is not in use. ()

02. Access by Children Five Years of Age and Under. Any licensed foster home that cares for children five (5) years of age and under and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: ()

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; ()

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; ()

c. If the house forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and ()

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. ()

03. Irrigation Canals or Similar Body of Water. A licensed foster home caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable, whose property adjoins an irrigation canal or similar body of water, must have fencing that prevents access to the canal or similar body of water by the child. ()

04. Other Safety Water Precautions. ()

a. Wading pools must be empty when not being used; ()

- b.** Children must be under direct supervision of an adult while using a wading pool; ()
- c.** Toys that attract young children to the pool area must be kept picked up and away for the pool area when not in use; and ()
- d.** A child who does not know how to swim must use an approved lifesaving personal flotation device. ()

(BREAK IN CONTINUITY OF SECTIONS)

665. SERVICES FOR CHILD'S BIRTH PARENTS.

A children's agency that accepts custody of a child from a birth parent or parents ~~shall~~ must provide services for the parent or parents either directly or through cooperative arrangements. The children's agency ~~shall~~ must ensure that the legal rights of the birth parents are protected throughout the decision-making about release of records, as required by statutes governing Termination of Parental Rights and Adoptions. The children's agency ~~shall~~ will respect the expressed desires of either or both birth parents to provide for continuity of identity of the child's religious, cultural, racial, linguistic, and ethnic background, provided the desired request does not deny or delay placement of the child for adoption in accordance with the Multiethnic Placement Act (MEPA), and such considerations are legal.
(3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

671. FAMILY HOME STUDY, ADOPTION, APPLICATION PROCESS AND CONTENT.

A children's agency ~~shall~~ must complete a written family home study application before approving the home for the placement of a child for purposes of adoption. (3-30-01)()

01. Background Information. An applicant for adoption ~~shall~~ must provide the children's agency with the names of each adult member of the household, and signed releases to obtain any of the information required in Sections 400 through 499 of these rules for each member. (3-30-01)()

02. Required Information. The adoptive home study ~~shall~~ must include applicable information required in Section 405 of these rules and ~~shall include~~ the following information: (3-30-01)()

- a.** Any relevant findings from the criminal history and background checks; (3-30-01)()
- b.** Each adoptive parent's reasons for applying to be an adoptive parent and prior efforts to adopt; (3-30-01)
- c.** Understanding of the purpose and permanence of adoption; (3-30-01)
- d.** How long the applicants have considered adoption; (3-30-01)
- e.** *Which partner initiated the adoption;* (3-30-01)
- fe.** The attitudes toward adoption by immediate and extended members of the family and other persons who reside in the home; (3-30-01)
- gf.** Family's attitudes toward the adoptive child's family and willingness to allow them contact with the child after adoption; (3-30-01)
- hg.** Prior and current experiences with out-of-home care for the applicant's children; (3-30-01)

- ~~i~~h. Applicant's experience with other helping agencies or resources in their communities; (3-30-01)
- ~~j~~i. Applicant's comfort level in seeking help from services outside the family; (3-30-01)
- ~~k~~j. Applicant's awareness of the potential for the child to have identity problems and loss regarding separation from birth parents; (3-30-01)
- ~~k~~. Applicants understanding of and disclosure of the circumstances of the adoption to the child; (3-30-01)
- ~~m~~l. Applicants understanding that the child will have questions about birth parents and other relatives; (3-30-01)
- ~~n~~m. Specifications of children preferred by the family that include the number of children, and the age, gender, race, ethnic background, social, emotional and educational characteristics of children preferred; (3-30-01)
- ~~o~~n. Information on the adoptive family's medical insurance coverage including insurance carrier, policy number, eligibility of new adoptive family member(s), limitations and exclusions; and (3-30-01)
- ~~p~~o. Any other information deemed necessary to complete the study. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

673. SELECTION OF AN ADOPTIVE PLACEMENT.

The factors listed are in random order and are not intended to reflect relative priority. A children's agency ~~shall~~ must consider the following factors in selecting suitable adoptive parents for a child: ~~(3-30-01)(_____)~~

- 01. Child's Needs.** The physical, emotional, medical, and educational needs of the child. (3-30-01)
- 02. Continued Contact.** The child's needs for continued contact with the birth parent(s), siblings, relatives, foster parents, and other persons significant to the child. (3-30-01)
- 03. Racial, Ethnic, and Cultural Considerations.** In accordance with the Multiethnic Placement Act (MEPA), the child's racial, ethnic, cultural identity, heritage, and background may only be considered if a written assessment of the child indicates that such consideration is in the best interest of the child. ~~(3-30-01)(_____)~~
- 04. Authorized Placement on Approved Recommendations.** The children's agency ~~shall~~ must require authorization by a chief administrator after the recommendations of approval are given by a service worker supervisor. The approval or denial ~~shall~~ must be documented in the case record. ~~(3-30-01)(_____)~~
- 05. Placement.** A children's agency ~~shall~~ will place a child with children's agency-approved adoptive parents consistent with the recommendations specified in the adoptive family study and the needs of the child identified in these rules. ~~(3-30-01)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

749. SWIMMING POOL, POND, OR OTHER BODY OF WATER.

An above-ground or in-ground swimming pool, pond, or other body of water on the premises of a children's residential care facility for use by children ~~shall~~ must comply with Section ~~39-105~~ 56-1003(3)(d), Idaho Code, and applicable swimming pool construction, sanitation, water quality standards, water temperature, recreational bathing and life saving provisions of federal, state, county and municipal laws, regulations and ordinances. ~~They shall be~~

~~maintained in a clean and safe manner, safeguarded when not in use by children, have sufficiently clear water to allow easy visibility in all areas of the pool or body of water used by children, and maintain at least one (1) staff on duty at all times when children are in the water who has a valid lifesaving or lifeguard certificate issued by a nationally recognized organization.~~ (3-30-01)()

01. Staff Person with Lifesaving or Lifeguard Certificate. The facility must maintain at least one (1) staff person who has a valid lifesaving or lifeguard certificate issued by a nationally recognized organization. This certified staff person must be on duty at all times when children are in the water ()

02. Pools, Hot Tubs, Ponds, and Other Bodies of Water. The facility must maintain the pools, hot tubs, ponds, and other bodies of water on its property in good repair, in a clean condition, and free from safety hazards and dangerous machinery and equipment. Areas and equipment that present a hazard to children must not be accessible by children. The following safeguards must be provided: ()

a. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or ()

b. If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; ()

i. Pool or hot tub covers must be completely removed when in use; ()

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; ()

iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and ()

c. A reaching pole with a hook and a ring buoy must be accessible; and ()

d. Exterior ladders on above ground pools must be removed when the pool is not in use. ()

03. Access by Children Five Years of Age and Under. Any children's residential care facility that cares for children five (5) years of age and under, and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: ()

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; ()

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; ()

c. If a building forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and ()

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. ()

04. Irrigation Canals or Similar Body of Water. A children's residential care facility caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable whose property adjoins an irrigation canal must have fencing that prevents access to the canal or similar body of water by the child. ()

05. Other Water Safety Precautions. ()

a. Wading pools must be empty when not being used; ()

b. Children must be under the direct supervision of an adult while using a wading pool; ()

c. Toys that attract young children to the pool area must be kept picked up and away from the pool area when not in use; and ()

d. A child who does not know how to swim must use an approved lifesaving personal flotation device. ()

(BREAK IN CONTINUITY OF SECTIONS)

784. STAFF QUALIFICATIONS FOR CHILDREN'S ALCOHOL-DRUG ABUSE RESIDENTIAL FACILITY.

01. Chief Administrator. Qualifications of the chief administrator ~~shall~~ must be verified through written documentation of work experience, education and classroom instruction. The chief administrator ~~shall~~ must have at least: (~~3-30-01~~)()

a. A Master's degree from an accredited college or university in a relevant field and two (2) years of paid full-time experience with one (1) year in administration; or (3-30-01)

b. A Bachelor's degree from an accredited college or university in a relevant field and three (3) years of paid full-time experience with one (1) year in administration; and (3-30-01)

c. Knowledge and demonstrated competence in planning, budget development and other administrative duties. (3-30-01)

02. Clinical Director Qualifications. A clinical director ~~shall~~ must have at least: (~~3-30-01~~)()

a. A Master's Degree from an accredited college or university in a relevant field and five (5) years of paid full-time experience with three (3) years experience in direct alcohol-drug abuse treatment; (3-30-01)

b. Knowledge and experience and demonstrated competence in treatment including client evaluation, counseling techniques, relapse prevention, case management and family systems; and (3-30-01)

c. Working knowledge of the normal process of child and adolescent growth and development, the effects of alcohol and drugs on a child's growth and development. (3-30-01)

03. Program Supervision Qualifications. A program supervisor, located at the children's residential care facility ~~shall~~ must possess at least: (~~3-30-01~~)()

a. Five (5) years of full-time paid experience in alcohol-drug abuse treatment with at least two (2) years in direct treatment; or (3-30-01)

b. A Master's degree from an accredited college or university and three (3) years of paid full-time experience with two (2) years in direct alcohol-drug treatment; or (3-30-01)

c. A Bachelor's degree from an accredited college or university in a relevant field and four (4) years of paid full-time experience with two (2) years in direct alcohol-drug treatment; and (3-30-01)

d. One (1) year of paid full-time experience in supervision; and (3-30-01)

e. Knowledge and experience and demonstrated competence in alcohol-drug treatment, including client evaluation, counseling techniques, relapse prevention, case management and family systems; and (3-30-01)

f. Working knowledge of the normal process of child and adolescent growth and development, the

effects of alcohol-drugs on a child's growth, and development. (3-30-01)

04. Counselor Qualifications. ~~There shall be~~ facility must have a ratio of at least one (1) alcohol-drug counselor for every six (6) children in treatment ~~or fraction thereof. An~~ The alcohol-drug counselor ~~shall have~~ must meet the following qualifications: ~~(3-30-01)()~~

a. Five (5) years of full-time paid experience in alcohol-drug abuse treatment with at least two (2) years in direct alcohol-drug treatment with children; or (3-30-01)

b. A Bachelor's degree from an accredited college or university in a relevant field and two (2) years of paid full-time experience with one (1) year in direct alcohol-drug abuse treatment with children; and (3-30-01)

c. Possess certification or licensure by a state or nationally recognized alcohol-drug addiction counselor credentialing or certifying organization which requires: (3-30-01)

i. Knowledge and skill acquired through at least two-thousand (2000) hours of a combination of specialized training, education and experience with direct treatment of children; and (3-30-01)

ii. Thirty (30) hours of classroom instruction in child development; and (3-30-01)

iii. A working knowledge of family systems as documented through experience, course-work or training. (3-30-01)

d. An alcohol-drug counselor hired prior to ~~the effective date of these rules shall meet all requirements by June 30, 2004~~ January 1, 2007, will have three (3) years to complete the minimum requirements as described in Subsections 784.04.a. through 784.04.c. of these rules. A counselor hired after June 30, 2001 will have three (3) years from date of employment to on January 1, 2007, or after must meet these criteria all requirements. (3-30-01)

05. Direct Care Staff Qualifications. Direct care staff ~~shall~~ must have at least sixteen (16) hours of training in basic alcohol-drug abuse issues, addressing dependency, enabling, co-dependency and confidentiality within sixty (60) days of employment. ~~(3-30-01)()~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.06 - DEVELOPMENTAL DISABILITIES FAMILY SUPPORT AND IN-HOME ASSISTANCE

DOCKET NO. 16-0606-0601 (NEW CHAPTER)

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. This rulemaking is under the authority of Sections 56-202(b) and 39-5103, Idaho Code.

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

Wednesday, October 18, 2006 - 6:00 pm
Department of Health & Welfare Region IV Office
1720 Westgate Drive
Suite D, Room 119
Boise, Idaho 83704

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:

In order to provide enforceable standards for the Developmental Disabilities Family Support and In-Home Assistance program, the Department has created a new chapter of rule under the provisions of Title 39, Chapter 51, Idaho Code. This program provides funding for services and equipment to help individuals with developmental disabilities to continue to live with their families, prevent institutionalization, improve access to community supports, use existing resources efficiently, and obtain enhanced care. This new chapter provides rules to replace the guidelines that are currently used to administer the program and adds a new grievance procedure option as a less costly alternative to the more formal administrative appeals process that still remains as an option.

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

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

There is no anticipated fiscal impact to the state general fund as result of this new chapter of rules. The costs for this program have been appropriated through the Department's budget process and will be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 7, 2006, Vol. 06-6, page 105.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cameron Gilliland at (208) 334-5536.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned at the address below and delivered on or before Wednesday, October 25, 2006.

DATED this 11th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax; kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0606-0601

IDAPA 16
TITLE 06
CHAPTER 06

16.06.06 - DEVELOPMENTAL DISABILITIES FAMILY SUPPORT AND IN-HOME ASSISTANCE

000. LEGAL AUTHORITY.

The Director of the Idaho Department of Health and Welfare has the authority to promulgate these rules under Sections 56-202(b) and 39-5103, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.06.06, "Developmental Disabilities Family Support and In-Home Assistance." ()

02. Scope. This chapter contains the general standards for administering the Developmental Disabilities Family Support and In-Home Assistance program, hereafter referred to as "DD Family Support." ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. GRIEVANCE PROCEDURE AND ADMINISTRATIVE APPEALS.

01. Grievance Procedure. Families who wish to appeal a benefit decision may file a grievance in accordance with Section 025 of these rules. The purpose of this option is to provide a means of resolving disputes over benefits without the need to resort to the formal administrative appeals process. However, the administrative appeals process remains available as an option. ()

02. Administrative Appeals. Administrative appeals are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter of rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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. (208) 334-5500. ()

05. Internet Website Address. The website address is: <http://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse and Misconduct." ()

009. (RESERVED).

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: ()

01. Department. The Idaho Department of Health and Welfare (IDHW) or a person authorized to act on behalf of the Department. ()

02. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, 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, which 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 or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. ()

03. Developmental Disabilities (DD) Family Support and In-Home Assistance Program. A Department program that operates under the authority of Title 39, Chapter 51, Idaho Code. The purpose of this program, also known simply as the "DD Family Support Program," is to provide assistance for families of individuals with developmental disabilities who are institutionalized, or to families of such individuals for whom institutionalization may be imminent, and who will, as a result of DD Family Support assistance, be able to return or keep their family member home. Additionally, DD Family Support assistance is intended to help families prior to a crisis in order to prevent the need for a family member with a developmental disability to move to an institutional or residential placement outside of the family's home. ()

04. Developmental Disabilities (DD) Family Support Assistance. Funding provided to eligible families under the DD Family Support program. ()

05. Developmental Disabilities (DD) Family Support Council. A volunteer group, made up mostly of people with developmental disabilities or their family members, whose purpose is to advise and consult with the Department in matters relating to the DD Family Support program. ()

- 06. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ()
- 07. Family.** The term “family” does not include paid providers of care. A family, as defined in Section 39-5102(6), Idaho Code, is a group of interdependent persons residing in the same household and includes an individual with a developmental disability and one (1) or more of the following: ()
- a.** A birth or adoptive mother or father, stepparent, brother, sister, or any combination; ()
 - b.** Extended blood relatives, such as a grandparent, aunt, uncle, nephew, or niece; or ()
 - c.** A legal guardian. ()
- 08. Title IV-E.** The title under the Social Security Act that provides funding for foster care maintenance and adoption assistance payments for certain eligible children. ()
- 011. -- 024. (RESERVED).**
- 025. GRIEVANCE PROCEDURE.**
- 01. How Does a Family File a Grievance?** Families who wish to file a grievance regarding a benefit decision must do so within thirty (30) days of receiving the decision. To file a grievance, families must submit a written request that outlines their reasoning to one (1) of the following: ()
- a.** A DD Family Support Council, where available; ()
 - b.** The Regional Program Manager; or ()
 - c.** The Department's Central Office Program Manager. ()
- 02. How is the Grievance Request Reviewed?** ()
- a.** The grievance request will be reviewed by the local DD Family Support Council, where available. ()
 - b.** If a DD Family Support Council is not available, or if a family disagrees with the decision of the DD Family Support Council, they may present a written grievance request to the Regional Program Manager. ()
 - c.** The Regional Program Manager will then select two (2) individuals to assist him with his review of the grievance. The two (2) individuals selected by the Program Manager may include members of the local DD Family Support Council, where available, or staff members with expertise in DD Family Support or Developmental Disabilities. ()
 - d.** The Regional Program Manager will render a written decision on the grievance request within twenty (20) days of receiving the grievance. ()
- 03. What if the Family Wishes to Pursue Their Grievance Further?** If the family wishes to pursue their grievance further, they must submit a written request to the Department to appeal the grievance decision. ()
- a.** The request to appeal the grievance decision must be made within twenty (20) days of being notified of the decision regarding their initial grievance request. ()
 - b.** This appeal of the grievance decision will then be reviewed by the Central Office Program Manager who oversees the DD Family Support program, a Developmental Disabilities Program Specialist, and an individual with a developmental disability or a family member of an individual with a developmental disability. ()
 - c.** The Central Office Program Manager will render a written decision within ten (10) days of

receiving the appeal of the grievance decision. ()

04. What Other Remedies are Available After the Grievance Process? If the family is still not satisfied with the decision, they may make an administrative appeal as provided under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

026. -- 099. (RESERVED).

100. WHO IS ELIGIBLE FOR DEVELOPMENTAL DISABILITIES (DD) FAMILY SUPPORT ASSISTANCE?

Families who reside in Idaho and include a member with a developmental disability are eligible to receive DD Family Support assistance. The family must express a desire for the member with a developmental disability to reside at home and must submit a DD Family Support application to receive services. Families must obtain the agreed-upon services and account for the assistance funds expended for these services or equipment. ()

01. How is the Determination of a Developmental Disability Made? The family member with a developmental disability must be determined by the Department to meet the developmental disability standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501. ()

02. What Financial Information Must Be Provided? Families will not be asked to provide financial information as a requirement for participation in the DD Family Support program. Eligibility for the DD Family Support program will be determined by the Department separately from the determination of the benefit. The Department may require additional information of families in order to make eligibility decisions. ()

101. WHO IS NOT ELIGIBLE TO RECEIVE DD FAMILY SUPPORT ASSISTANCE?

Paid providers of care are not eligible for DD Family Support assistance. A paid provider of care is anyone who receives state or federal payment for the care or therapy of an individual who has a developmental disability. An adoptive family receiving Title IV-E funds as part of an adoption agreement is not considered to be a paid provider of care and will not be excluded from receiving DD Family Support assistance because they receive Title IV-E funds. ()

102. -- 199. (RESERVED).

200. HOW DOES A FAMILY APPLY FOR DD FAMILY SUPPORT ASSISTANCE?

01. Application for Service. Each family who wishes to receive DD Family Support assistance must apply for the assistance using the Department-approved "DD Family Support Application." ()

02. Prior Authorization of Expenditure. Due to the limited funds available, the Department must approve the application and prior authorize the expenditure of assistance funds before the award of assistance is made to ensure that funds for the requested assistance for the identified needs are available. ()

201. -- 299. (RESERVED).

300. HOW IS THE AMOUNT OF DD FAMILY SUPPORT ASSISTANCE DETERMINED?

01. Decisions Made Case-By-Case. The Department will determine each award of DD Family Support assistance on a case-by-case basis, with advice from DD Family Support Councils where they are available. The award of DD Family Support assistance in one (1) case sets no precedence for the award of DD Family Support assistance in the future. There is no guarantee that DD Family Support assistance funds will be available when a family applies. The Department may require additional information from families in order to make benefit decisions. ()

02. Bases for DD Family Support Assistance Decisions. The Department will base its decisions regarding the award of DD Family Support assistance on the following: ()

a. The ability of the assistance to allow an individual with a developmental disability to move into his

family's home from an institution. ()

b. The ability of the assistance to prevent the necessity of an individual moving into an institution. ()

c. Priority will be given to families whose member with a developmental disability would face the most severe consequences without supports. ()

d. Priority will be given to families whose member with a developmental disability has the greatest urgency of need. ()

e. DD Family Support assistance is contingent on the availability of state and regional funding. ()

301. WHAT SERVICES AND EQUIPMENT MAY BE PURCHASED USING DD FAMILY SUPPORT ASSISTANCE?

DD Family Support assistance can be used for any of the following items when those items are listed on the approved DD Family Support application. Assistance may only be used when no other payment source is available to the individual with a developmental disability, or his family, to purchase the items requested on the DD Family Support application. The following services and equipment may be purchased under the DD Family Support program: ()

01. Diagnostic or Evaluative Procedures. Diagnostic and evaluative procedures that are necessary to ensure the health and well-being of the individual with a developmental disability. ()

02. Special Equipment. Special equipment or items required by the individual with a developmental disability or needed to assist the family to care for that individual. ()

03. Therapeutic Services. Therapeutic Services to assist the individual with a developmental disability toward independence, or to maintain or improve his health, or to enhance his quality of life. ()

04. Specialized Dietary Needs. Foods or nutrients required to meet the specialized dietary needs of the individual with a developmental disability. ()

05. Medical and Dental Care. Medical and dental care that is not covered under the family's health insurance or publicly-funded programs. Such care must be required to maintain or improve health or to enhance quality of life for the family member with a developmental disability. ()

06. Home Health, Nursing, or Personal Assistance Services (PCS). Home health, nursing, or personal assistance services may be purchased when the family is unable to meet the care demands of the individual with a developmental disability. ()

07. Counseling Services. Counseling Services may be purchased for the individual with a developmental disability, or his family. Such counseling services can include behavior management. ()

08. Respite Care. ()

a. Respite Care may be purchased using DD Family Supports assistance. Respite care may not be utilized in the place of day care when all caregiving family members are working. Assistance may be utilized for respite care or for out-of-the-ordinary expenses to cover supervised care beyond care costs expected for a typical person of the same age. ()

b. Additional costs for the care of siblings during the provision of respite care may be covered when it is necessary for the primary caregivers to be absent. When the family caregivers must accompany the individual with a disability to treatment or evaluation appointments, reasonable sibling care costs may be covered. ()

09. Adaptations or Technical Assistance. Environmental adaptations or technical assistance to permit successful integration and access for the individual with a developmental disability. ()

10. Special Clothing. Specialized or adapted clothing required due to the family member's developmental disability, including incontinence supplies. Assistance may be used only for supplies that would exceed what a family would normally purchase except in extreme circumstances. ()

11. Supports for Recreational Activities. Supports or assistance that allow the individual with a disability to join family and friends in leisure time or recreational activities. Assistance funds may not be used to pay for standard tickets, fees, or other costs that would typically be incurred by a person without a developmental disability. The necessary supports must be related to meeting special needs due to the developmental disability. ()

12. Transportation. Transportation related to the care of the family member with a developmental disability. ()

13. Housing Modifications. Housing modifications for the purposes of accessibility or ease in handling related to the needs of the person with a developmental disability. ()

14. Similar or Related Costs. Costs for items or services that are similar in nature to the items listed above or are related to the effectiveness of the purchase of the items above. ()

302. WHAT PAYMENT OPTIONS ARE AVAILABLE FOR DD FAMILY SUPPORT ASSISTANCE?
Families may use DD Family Support assistance only for services and equipment authorized on the approved DD Family Support application. Families may request any of the following payment options for their DD Family Support assistance. ()

01. Advance Payment. The Department may authorize advance payment to families on an as-needed basis. If a family does not utilize all of the assistance provided under the approved DD Family Support application, they must return any unspent funds to the Department. ()

02. Payment After the Service Has Been Delivered or Item Purchased. The Department may reimburse families for services or equipment after the service has been delivered or the item purchased when those costs were prior-authorized on an approved DD Family Support application. ()

03. Payment Directly to Vendors or Providers of Services or Equipment. The Department may pay vendors or providers of services or equipment directly. In order to be paid directly, vendors must provide the Department with an itemized invoice that includes vendor name, address, Social Security number or Tax Identification number, and other documentation as requested by the Department. ()

303. WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR DD FAMILY SUPPORT ASSISTANCE?

01. Documentation Requirements for the Family. Each family who receives DD Family Support assistance must provide documentation to the Department of how the DD Family Support assistance was spent. Documentation must be provided on the Department-approved forms. Families who do not account for the use of DD Family Support assistance or refuse to repay assistance funds not used for the approved purposes, may be deemed ineligible for DD Family Support assistance for a period of time, determined by the Department, that will not exceed twelve (12) months. ()

02. Documentation Requirements for the Developmental Disabilities Program. The Developmental Disabilities Program will maintain documentation of DD Family Support applications and a record of approved expenditures. ()

304. HOW IS DD FAMILY SUPPORT ASSISTANCE TERMINATED?
The Department may terminate DD Family Support assistance under any of the following conditions: ()

01. Family Action. The family requests termination; ()

02. Death of the Individual with a Disability. The individual in the family with a developmental

disability dies; ()

03. Ineligibility. The eligibility criteria for DD Family Support assistance is no longer met; or ()

04. Funding. Inadequate funds are available to continue providing DD Family Support assistance. ()

305. -- 399. (RESERVED).

400. WHAT ARE THE PURPOSE, COMPOSITION, AND ROLES OF A DD FAMILY SUPPORT COUNCIL?

01. The Purpose of a DD Family Support Council. A DD Family Support Council is a volunteer group whose purpose is to advise and consult with the Department in matters relating to DD Family Support. ()

02. Composition of a DD Family Support Council. The majority of a council's members must be people with a developmental disability or family members of people with a developmental disability. A council may also include other community members. Each DD Family Support Council member must be selected and approved by the Department's Regional Program Manager. The Department will make efforts to assure broad geographic representation. The DD Family Support Council members will be registered as volunteers with the Department of Health and Welfare. ()

03. Roles of a DD Family Support Council. The roles of a DD Family Support Council include: ()

a. Advise the Department on the use of DD Family Support funds; ()

b. Offer program guidance through assistance with the establishment of a family-friendly procedure for administering DD Family Support funds; ()

c. Provide feedback and review of decisions related to the administration of DD Family Support funds; ()

d. Provide information and referral about community supports and available resources to augment DD Family Support program funds and serve as a secondary resource when denials are necessary; and ()

e. Provide advocacy for the DD Family Support program. ()

401. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-0601 (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 Sections 56-202, 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 18, 2006.

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 entire chapter of rules is being repealed. It will be replaced by a completely rewritten chapter proposed under Docket No. 16-0612-0602 that is published in this Bulletin immediately following this notice.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted prior to the publication of the proposed rule because the existing chapter of rules is being repealed as part of the promulgation process for the rewrite. The entire ICCP chapter is being rewritten based on recommendations from the Office of Performance Evaluation (OPE), the Idaho Childcare Advisory Council, and Department staff.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

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 25, 2006.

DATED this 10th day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.06.12 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-0602 (CHAPTER REWRITE) (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 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 18, 2006.

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 rule change will incorporate recommendations obtained from the Office of Performance Evaluation (OPE), Legislative Auditors and the Idaho Childcare Advisory Panel to:

1. Increase the current income limits from 150% of 1998 Federal Poverty Guidelines to 150% of the Federal Poverty Guidelines of 2005.
2. Update the co-payment rates to more accurately reflect the smaller income increases typical of families receiving ICCP
3. Add requirement for post-secondary students to work in order to be eligible for child care benefits; and limit the length of time they can receive child care benefits from 4 years to 2 years;

The current chapter of ICCP rules will be repealed in order to add or update required sections; eliminate redundant sections of rules; update, revise, clarify and reorganize chapter content. Idaho's citizens will be able to locate and understand sections of the rule that they are most interested in.

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

This rule change will lower the portion of child care costs that families must currently pay. No fees are charged or collected by the Department, but families will still be required to pay a portion of their child care cost to their provider.

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

There is no fiscal impact to the state general fund; however, there will be decreased costs to the federal Child Care Development Fund Block Grant.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted prior to the publication of the proposed rule because rule changes are being made based on recommendations from the Office of Performance Evaluation (OPE), the Idaho Childcare Advisory Council, and Department staff.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

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 25, 2006.

DATED this 10th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-0602

IDAPA 16
TITLE 06
CHAPTER 12

16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

000. LEGAL AUTHORITY.

Under Section 56-202, Idaho Code, the Director of the Department of Health and Welfare is authorized to promulgate, adopt, and enforce rules for the administration of public assistance programs. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter of rules is IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program (ICCP).” ()

02. Scope. These rules provide the requirements for determining participant and provider eligibility for the Idaho Child Care Program (ICCP) and for issuing child care benefit payments. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS AND COMPLAINT PROCEDURE.

01. Administrative Appeals. All administrative appeals are governed by provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” ()

02. Complaint Procedure. The Department will maintain a record of substantiated child protection complaints against child care providers. Information regarding such substantiated child protection complaints is available in accordance with the Section 006 of these rules. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference in this chapter of rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEB SITE.

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 Web Site. The Department's internet web site is found at "http://www.healthandwelfare.idaho.gov." ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L.

The following definitions and abbreviations apply to this chapter of rules: ()

01. AABD. Aid to the Aged, Blind, and Disabled. ()

02. Child. Any person under age eighteen (18) under the care of a parent, or a person eighteen (18) years of age or older who is claimed on tax returns as a dependent. ()

03. Child Care. Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. ()

04. Department. The Idaho Department of Health and Welfare. ()

05. Earned Income. Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. ()

06. Employment. A job paying wages or salary equal to a 40 hour week at federal or state minimum wage whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. ()

07. Foster Care. The twenty-four (24) hour substitute care of children provided in a foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. ()

08. Foster Child. A child placed for twenty-four (24) hour substitute care by a private or public agency. ()

09. Foster Home. The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute care to six (6) or fewer children. ()

10. In Loco Parentis. Acting "in loco parentis" means a person who acts in place of a parent, assuming care and custody of a child by a formal or informal agreement with the child's parent. ()

11. Job Training and Education Program. A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. ()

12. Licensed Practitioner of the Healing Arts. A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. ()

011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.
The following definitions and abbreviations apply to this chapter of rules: ()

01. Minor Parent. A parent who is under the age of eighteen (18). ()

02. Non-Recurring Lump Sum Income. Income received by a family in a single payment, not expected to be available to the family again. ()

03. Parent. A person legally responsible for a child because of birth, adoption, marriage, or guardianship; or a person acting in loco parentis. ()

04. Preventive Services. Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. ()

05. Prospective Income. Income a family expects to receive within a given time. This can be earned or unearned income. ()

06. Provider. An individual, organization, agency, or other entity providing child care. ()

07. Relative Provider. Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or current marriage who provides child care. ()

08. SSI. Supplemental Security Income. ()

09. Special Needs. Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). ()

10. TAFI. Temporary Assistance for Families in Idaho. ()

11. Unearned Income. Unearned income includes income from retirement, interest, child support, and any income received from a source other than employment or self-employment. ()

012. -- 099. (RESERVED).

THE APPLICATION AND ELIGIBILITY DETERMINATION PROCESS
(Sections 100 through 199)

100. APPLICATION FOR CHILD CARE BENEFITS.
Child care benefits are payments from the Department to child care providers on behalf of eligible families. An application for assistance for child care benefits must be completed, signed by the applicant, and received by the Department. The date of the application is the date it is received by the Department. The applicant must be notified, in writing, of the approval or denial of the application and of the right to appeal, if applicable. ()

101. PARENTAL CHOICE OF CHILD CARE PROVIDER.
Eligible parents may choose among the following types of child care providers available under ICCP: ()

01. Child Care Center. A child care center cares for thirteen (13) or more children. ()

02. Group Child Care. Group child care is for seven (7) to twelve (12) children. ()

- 03. Family Child Care.** Family child care is for six (6) or fewer children. ()
- 04. Relative Child Care.** Relative child care is for six (6) or fewer children and may only be provided by the child's grandparent, great-grandparent, aunt, uncle, or adult sibling. ()
- 05. In-Home Child Care.** In-home child care is provided by a relative or non-relative in the home of the child. Eligibility for in-home child care is determined in accordance with Section 400 of these rules. ()
- 102. RESIDENCY.**
The family must live in the state of Idaho, and have no immediate intention of leaving. ()
- 103. (RESERVED).**
- 104. FAMILY COMPOSITION.**
A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: ()
- 01. Married Parents.** Married parents living together in a common residence. ()
- 02. Unmarried Parents.** Unmarried parents who live in the same home and who have a child in common living with them. ()
- 03. Dependents.** Individuals who are claimed as dependents for tax purposes. ()
- 04. Minor Parent.** A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. ()
- 05. Individual Acting In Loco Parentis.** An individual acting in loco parentis who is eligible to apply for child care benefits. ()
- 105. ELIGIBLE CHILD.**
A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: ()
- 01. Immunization Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. ()
- 02. Citizenship or Alien Status Requirement.** A child must be one (1) of the following: ()
- a.** A citizen; ()
- b.** Living lawfully in the United States. ()
- 03. Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: ()
- a.** A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: ()
- i.** A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. ()

ii. A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection or mental health case plan requires constant supervision. ()

b. A child who is eligible under Subsection 105.03.a. may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. ()

106. INCAPACITATED PARENT.

An incapacitated parent, unable to adequately care for the children in a two (2) parent family, is not required to have any qualifying activities as listed under Section 200 of this chapter of rules, as long as the other parent is participating in qualifying activities. A single parent family in which the parent is incapacitated is not eligible for ICCP. A parent with a disability does not automatically qualify as an incapacitated parent. ()

107. -- 199. (RESERVED).

QUALIFYING ACTIVITIES AND REPORTING REQUIREMENTS
(Sections 200 through 299)

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, a family must need child care because they are engaged in one (1) of the following activities that qualifies them for child care benefits: ()

01. Employment. The parent is currently employed. ()

02. Looking for Employment. The unemployed parent is looking for employment. This is limited as a qualifying activity to three (3) months in a calendar year. However, when looking for employment is required by the Department, the parent is not subject to this three (3) month limit. ()

a. Eighty (80) hours of looking for employment will be approved for each of the three (3) months for which this qualifying activity is allowed. The actual amount of payment is based on Section 501 of these rules. ()

b. When looking for employment is the qualifying activity, it can not be combined with any other qualifying activity listed under Section 200 of these rules. ()

03. Training or Education. The parent is attending an accredited education or training program. On-line classes cannot be counted as a qualifying activity for child care. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. In order for post-secondary education to be considered a qualifying activity, the parent must meet the following requirements: ()

a. They must work a minimum of ten (10) hours per week; and ()

b. They must have received less than twenty-four (24) months of child care benefits. ()

04. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. ()

05. Personal Responsibility Contract (PRC). The parent is completing Personal Responsibility Contract (PRC) activities negotiated between the Department and the parent as described in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families (TAFI) in Idaho." ()

201. REPORTING REQUIREMENTS FOR FAMILIES.

01. Changes That Must Be Reported Within Ten Days. A family who applies for or receives child

- care benefits must report the following changes within ten (10) days of the change: ()
- a. Anyone entering or leaving the household. ()
 - b. Change in the rates charged for child care services; ()
 - c. Change in the hours or nature of any qualifying activity; ()
 - d. Change in the number of hours worked; ()
 - e. A permanent change in rate of pay; ()
 - f. Any other permanent change in monthly income, either earned or unearned; and ()
 - g. A change of address for either the participant or the child care provider. ()
- 02. Changing Providers.** ()
- a. Changing Providers During the Month. A parent must notify ICCP by the twenty-fifth of the month of his intent to change providers for the next month of service. ()
 - b. Changing Providers Without Providing Notice. A parent who chooses to change providers without providing notice to the Department and who does not have good cause for failing to report the change, is responsible to pay the new provider for the next month of service. ()
- 202. -- 299. (RESERVED).**

FINANCIAL CRITERIA FOR ICCP ELIGIBILITY
(Sections 300 through 399)

300. INCOME LIMIT.

A family's income must be less than the published 2005 federal poverty guidelines for one hundred fifty percent (150%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty/index.shtml>. ()

301. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section 302 of these rules. If a self-employed individual has no countable income for a period of three (3) months, the Department will count the current federal minimum wage times the number of activity hours being claimed as income to determine child care benefits. ()

302. EXCLUDED INCOME.

The following sources of income are not counted as family income. ()

01. Earned Income of a Dependent Child. Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. ()

02. Income Received For Person Not Residing With The Family. Income received on behalf of a person who is not living in the home. ()

03. Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. ()

04. Assistance. Assistance to meet a specific need from other organizations and agencies. ()

05. Lump Sum Income. Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds one hundred fifty percent (150%) of the federal poverty limit for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. ()

06. Loans. Loans with written, signed repayment agreements. ()

07. TAFI and AABD Benefits. TAFI and AABD benefits. ()

08. Foster Care Payments. Foster care payments. ()

09. AmeriCorps/VISTA Volunteers. Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under P.L. 93-113, Title IV, Section 404(g) are excluded as income. ()

10. Income Tax Refunds and Earned Income Tax Credits. Income tax refunds and earned income tax credits are excluded as income. ()

11. Travel Reimbursements. Reimbursements from employers for work-related travel. ()

12. Tribal Income. Income received from a tribe for any purpose other than direct wages. ()

13. Foster Parents' Income. Income of licensed foster parents is excluded when determining eligibility for a child in the custody of the Department. Income is counted when determining eligibility for the foster parent's child(ren). ()

14. Adoption Assistance. Adoption assistance payments are excluded from income. ()

15. Child Support Payments. Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. ()

303. SELF-EMPLOYMENT INCOME.

The family may choose one (1) of the calculation methods below in Subsections 303.01 and 303.02 of this rule to determine income. Income is annualized if the participant has been self-employed for more than one (1) year. The income received over the period of months the business has been operating will be averaged if the participant has been self-employed for less than one (1) year. ()

01. Gross Self-Employment Income. Gross self-employment income, less fifty percent (50%) for business expenses, is counted as family income. If the participant's current income from his business is different than past income, self-employment income and expenses will be projected based on current circumstances. ()

02. Net Self-Employment Income. Net self-employment income is calculated from gross income by subtracting the following allowable expenses from the gross income: ()

a. The cost of labor paid to individuals not in the home. ()

b. The cost of business inventory. ()

c. The cost of material. ()

d. The cost for rent and utilities, advertising, shipping and legal fees. ()

e. The cost of seed and fertilizer. ()

f. Interest paid to purchase income-producing property, including real estate. ()

- g.** Insurance premiums. ()
 - h.** Taxes paid on income-producing property. ()
 - i.** A vehicle that is an integral part of business activity. ()
- 304. -- 399. (RESERVED).**

IN-HOME CARE REQUIREMENTS
(Sections 400 through 499)

400. REQUIREMENTS FOR IN-HOME CARE UNDER ICCP.

Parents must contact the Department to request approval of in-home child care. Only parents who have qualified activities outside their home will be considered for in-home care approval. The Department limits the approval of all in-home child care under ICCP to the following circumstances: ()

01. Three or More Children in the Home. There are three (3) or more children in the home who are eligible for ICCP and require child care. ()

02. Fewer Than Three Children in the Home. If there are fewer than three (3) children in the home who are eligible for ICCP and require child care, in-home care will be approved by the Department only when one (1) of the following special circumstances are met: ()

a. Parents' qualifying activity occurs during times when out-of-home care is not available. If child care is needed during any period when out-of-home care is not available, in-home care will be approved for the entire time care is needed. A family is not expected to change between out-of-home and in-home care. ()

b. The family lives in an area where out-of-home care is not available. ()

c. A child has a verified illness or disability that would place the child or other children in an out-of-home facility at risk. ()

401. -- 499. (RESERVED).

PAYMENT INFORMATION
(Sections 500 through 599)

500. ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: ()

01. Payment for Employment, Seeking Employment, Training, Education, or Preventive Service Hours. Child care must be reasonably related to the hours of the parent's qualifying activities. Travel time is included in determining qualifying activities. ()

02. Family Member or Guardian Not Payable. A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward.. ()

03. One-Time Registration Fees. One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed usual and customary rates charged to all families. Registration fees are separate from local market rates. ()

04. Local Market Rates (LMR) for Child Care. The local market rates are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey. ()

501. AMOUNT OF PAYMENT.

Child Care payments will be based on Subsections 501.01 through 501.04 of these rules. ()

01. Payment Rate. Payment will be based on the lower of the billed cost of child care, or the local market rate. ()

a. The local market rate is determined from a survey of providers' child care charges which is conducted every two years. The local market rate is set at the seventy-fifth percentile and updated as the budget allows. ()

b. Each Region has a separate local market rate. Payment rates will be determined by the location of the child care facility. ()

c. If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. ()

d. The rate survey will be conducted at least every two (2) years. ()

02. Usual and Customary Rates. Rates charged by the child care provider must not exceed the usual and customary rates charged to all families. ()

03. In-Home Care. Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal requirements. Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care. ()

04. Payments. Payments will be issued directly to eligible providers. A warrant may be issued to a parent only when the parent provides proof the provider was paid in full, and no longer provides child care for the family. ()

502. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. ()

01. Poverty Rates. Poverty rates will be 150% of the federal fiscal year 2005 established rates published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12) ()

02. Calculating Family Payment. Families must pay the provider their share of costs for child care services which includes the families co-payments and any provider charges upon the payment made by the Department. 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 or billed costs, whichever is lower, less the co-payment listed in the following table: ()

| 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 | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% |
| \$500 - \$599 | 10% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% |
| \$600 - \$699 | 10% | 10% | 5% | 5% | 5% | 5% | 5% | 5% | 5% |
| \$700 - \$799 | 10% | 10% | 10% | 5% | 5% | 5% | 5% | 5% | 5% |
| \$800 - \$899 | 15% | 10% | 10% | 10% | 5% | 5% | 5% | 5% | 5% |
| \$900 - \$999 | 20% | 10% | 10% | 10% | 10% | 5% | 5% | 5% | 5% |
| \$1,000 - \$1,099 | 20% | 10% | 10% | 10% | 10% | 5% | 5% | 5% | 5% |
| \$1,100 - \$1,149 | 25% | 15% | 10% | 10% | 10% | 10% | 5% | 5% | 5% |
| \$1,150 - \$1,199 | 30% | 15% | 10% | 10% | 10% | 10% | 5% | 5% | 5% |
| \$1,200 - \$1,299 | 35% | 15% | 10% | 10% | 10% | 10% | 10% | 5% | 5% |
| \$1,300 - \$1,319 | 40% | 20% | 15% | 10% | 10% | 10% | 10% | 5% | 5% |
| \$1,320 - \$1,349 | 45% | 20% | 15% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,350 - \$1,379 | 50% | 20% | 15% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,380 - \$1,399 | 55% | 20% | 15% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,400 - \$1,439 | 60% | 20% | 20% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,440 - \$1,469 | 65% | 20% | 20% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,470 - \$1,489 | 65% | 25% | 20% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,490 - \$1,499 | 70% | 30% | 20% | 10% | 10% | 10% | 10% | 10% | 5% |
| \$1,500 - \$1,539 | 75% | 35% | 20% | 15% | 10% | 10% | 10% | 10% | 10% |
| \$1,540 - \$1,569 | 80% | 40% | 25% | 15% | 10% | 10% | 10% | 10% | 10% |
| \$1,570 - \$1,603 | 85% | 45% | 25% | 20% | 10% | 10% | 10% | 10% | 10% |
| \$1,604 - \$1,619 | 100% | 50% | 25% | 20% | 10% | 10% | 10% | 10% | 10% |
| \$1,620 - \$1,649 | 100% | 55% | 30% | 20% | 10% | 10% | 10% | 10% | 10% |
| \$1,650 - \$1,699 | 100% | 60% | 30% | 20% | 10% | 10% | 10% | 10% | 10% |
| \$1,700 - \$1,799 | 100% | 65% | 30% | 20% | 15% | 10% | 10% | 10% | 10% |
| \$1,800 - \$1,849 | 100% | 70% | 35% | 20% | 15% | 10% | 10% | 10% | 10% |
| \$1,850 - \$1,899 | 100% | 75% | 35% | 20% | 15% | 10% | 10% | 10% | 10% |
| \$1,900 - \$1,949 | 100% | 80% | 35% | 25% | 15% | 10% | 10% | 10% | 10% |
| \$1,950 - \$2,010 | 100% | 85% | 35% | 25% | 15% | 10% | 10% | 10% | 10% |
| \$2,011 - \$2,025 | 100% | 100% | 40% | 30% | 20% | 15% | 10% | 10% | 10% |
| \$2,026 - \$2,074 | 100% | 100% | 45% | 30% | 20% | 15% | 10% | 10% | 10% |

| 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 | | | | | | | | |
| \$2,075 - \$2,099 | 100% | 100% | 50% | 30% | 20% | 15% | 10% | 10% | 10% |
| \$2,100 - \$2,124 | 100% | 100% | 55% | 30% | 20% | 15% | 10% | 10% | 10% |
| \$2,125 - \$2,149 | 100% | 100% | 60% | 35% | 20% | 15% | 10% | 10% | 10% |
| \$2,150 - \$2,174 | 100% | 100% | 65% | 30% | 20% | 20% | 10% | 10% | 10% |
| \$2,175 - \$2,199 | 100% | 100% | 70% | 35% | 20% | 20% | 10% | 10% | 10% |
| \$2,200 - \$2,239 | 100% | 100% | 75% | 35% | 20% | 20% | 15% | 10% | 10% |
| \$2,240 - \$2,269 | 100% | 100% | 80% | 35% | 20% | 20% | 15% | 10% | 10% |
| \$2,270 - \$2,299 | 100% | 100% | 80% | 35% | 20% | 20% | 15% | 10% | 10% |
| \$2,300 - \$2,329 | 100% | 100% | 85% | 40% | 25% | 20% | 20% | 10% | 10% |
| \$2,330 - \$2,369 | 100% | 100% | 85% | 45% | 25% | 20% | 20% | 10% | 10% |
| \$2,370 - \$2,399 | 100% | 100% | 90% | 50% | 30% | 20% | 20% | 10% | 10% |
| \$2,400 - \$2,418 | 100% | 100% | 95% | 55% | 35% | 20% | 20% | 15% | 10% |
| \$2,419 - \$2,469 | 100% | 100% | 100% | 60% | 35% | 20% | 20% | 15% | 10% |
| \$2,470 - \$2,500 | 100% | 100% | 100% | 65% | 35% | 20% | 20% | 15% | 10% |
| \$2,501 - \$2,549 | 100% | 100% | 100% | 70% | 35% | 20% | 20% | 15% | 10% |
| \$2,550 - \$2,599 | 100% | 100% | 100% | 75% | 40% | 25% | 20% | 20% | 15% |
| \$2,600 - \$2,739 | 100% | 100% | 100% | 80% | 45% | 25% | 20% | 20% | 15% |
| \$2,740 - \$2,799 | 100% | 100% | 100% | 85% | 50% | 30% | 20% | 20% | 15% |
| \$2,800 - \$2,825 | 100% | 100% | 100% | 90% | 55% | 30% | 20% | 20% | 15% |
| \$2,826 - \$2,899 | 100% | 100% | 100% | 100% | 60% | 30% | 20% | 20% | 20% |
| \$2,900 - \$2,925 | 100% | 100% | 100% | 100% | 65% | 35% | 25% | 20% | 20% |
| \$2,926 - \$2,999 | 100% | 100% | 100% | 100% | 70% | 35% | 25% | 20% | 20% |
| \$3,000 - \$3,029 | 100% | 100% | 100% | 100% | 75% | 40% | 30% | 20% | 20% |
| \$3,030 - \$3,069 | 100% | 100% | 100% | 100% | 80% | 45% | 30% | 20% | 20% |
| \$3,070 - \$3,099 | 100% | 100% | 100% | 100% | 85% | 50% | 30% | 20% | 20% |
| \$3,100 - \$3,149 | 100% | 100% | 100% | 100% | 90% | 55% | 35% | 25% | 20% |
| \$3,150 - \$3,233 | 100% | 100% | 100% | 100% | 95% | 60% | 35% | 25% | 20% |
| \$3,234 - \$3,299 | 100% | 100% | 100% | 100% | 100% | 65% | 35% | 25% | 20% |
| \$3,300 - \$3,349 | 100% | 100% | 100% | 100% | 100% | 65% | 40% | 30% | 20% |
| \$3,350 - \$3,399 | 100% | 100% | 100% | 100% | 100% | 70% | 45% | 30% | 20% |
| \$3,400 - \$3,449 | 100% | 100% | 100% | 100% | 100% | 75% | 50% | 30% | 25% |
| \$3,450 - \$3,499 | 100% | 100% | 100% | 100% | 100% | 80% | 55% | 35% | 25% |

| 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 | | | | | | | | |
| \$3,500 - \$3,599 | 100% | 100% | 100% | 100% | 100% | 85% | 60% | 35% | 25% |
| \$3,600 - \$3,640 | 100% | 100% | 100% | 100% | 100% | 90% | 65% | 35% | 25% |
| \$3,641 - \$3,749 | 100% | 100% | 100% | 100% | 100% | 100% | 65% | 40% | 30% |
| \$3,750 - \$3,775 | 100% | 100% | 100% | 100% | 100% | 100% | 70% | 45% | 30% |
| \$3,776 - \$3,849 | 100% | 100% | 100% | 100% | 100% | 100% | 75% | 50% | 30% |
| \$3,850 - \$3,899 | 100% | 100% | 100% | 100% | 100% | 100% | 80% | 55% | 35% |
| \$3,900 - \$3,999 | 100% | 100% | 100% | 100% | 100% | 100% | 85% | 60% | 35% |
| \$4,000 - \$4,025 | 100% | 100% | 100% | 100% | 100% | 100% | 90% | 65% | 40% |
| \$4,026 - \$4,048 | 100% | 100% | 100% | 100% | 100% | 100% | 95% | 70% | 45% |
| \$4,049 - \$4,199 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 75% | 50% |
| \$4,200 - \$4,299 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 80% | 55% |
| \$4,300 - \$4,399 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 85% | 60% |
| \$4,400 - \$4,455 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 90% | 65% |
| \$4,456 - \$4,499 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 70% |
| \$4,500 - \$4,599 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 75% |
| \$4,600 - \$4,699 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 80% |
| \$4,700 - \$4,799 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 85% |
| \$4,800 - \$4,863 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 90% |
| \$4,864 - \$4,899 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| \$4,900 + | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| * Maximum Income for ICCP Benefits: | | | | | | | | | |
| | \$1,604 for household of 2 | | | | \$3,641 for household of 7 | | | | |
| | \$2,011 for household of 3 | | | | \$4,049 for household of 8 | | | | |
| | \$2,419 for household of 4 | | | | \$4,456 for household of 9 | | | | |
| | \$2,826 for household of 5 | | | | \$4,864 for household of 10 | | | | |
| | \$3,234 for household of 6 | | | | | | | | |

*Maximum Income (or Eligibility for Payment) Based on 150% of Poverty (2005 Poverty Tables). ()

503. INTERIM CHILD CARE PAYMENT.

A family that uses a relative provider is not eligible for interim child care payments. If child care arrangements would otherwise be lost, child care may be paid under the following conditions: ()

01. Break in Employment or Education. During a break in employment or education of one (1) month or less. ()

02. Children Temporarily Out of the Home. While children are temporarily away from the home for a period of one (1) month or less. ()

504. -- 599. (RESERVED).

CHANGE REPORTING REQUIREMENTS FOR THOSE RECEIVING CHILD CARE BENEFITS
(Sections 600 through 699)

600. DEPARTMENT ACTION ON CHANGES.

The Department must take action on the following reported changes: ()

01. Change in Income or Hours of Activity. If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported. ()

02. Change in Billed Amount. If the billed amount of child care results in a decrease in the amount of the child care benefit, the Department will make the changes effective in the month the changes were reported. ()

03. Change Resulting in An Increase. If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported. ()

601. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.

The Department must redetermine eligibility for child care benefits at least every six (6) months. Eligibility must be redetermined more often than every six (6) months for the following qualifying activities: ()

01. Work Search. An individual is eligible to participate in work search activities for up to three (3) months in a calendar year. The Department must redetermine eligibility monthly for each individual participating in work search and determine if he intends to use another month of eligibility. ()

02. Preventive Services. The Department must redetermine eligibility every three (3) months for each family in which child care is needed for preventive services. ()

03. Education Activities. The Department must redetermine eligibility at the end of each semester or term for parents engaged in educational activities. ()

602. -- 699. (RESERVED).

PAYMENT ADJUSTMENTS AND PENALTIES
(Sections 700 through 704)

700. UNDERPAYMENT OF CHILD CARE BENEFITS.

When the Department has underpaid a family's child care benefits, a supplemental payment will be made. ()

701. OVERPAYMENTS AND RECOVERY.

An overpayment for child care services may occur as the result of Department, family or provider error, intentional program violations (IPV), or fraud, as established by a judicial or administrative determination as described in Section 56-227, Idaho Code. Recovery of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. An overpayment due to family or provider error, IPV or fraud must be recovered in full. ()

01. Provider Repayment Requirement. A provider must repay any overpayment resulting from the provider's failure to report changes within ten (10) days as required under Section 807 of these rules. A provider may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of eligibility to receive ICCP payments. Ineligibility will continue until the provider repays the overpayment or a new repayment agreement is negotiated with the Department. ()

02. Parental Repayment Requirement. A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 201 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. ()

702. INTENTIONAL PROGRAM VIOLATIONS (IPV).

An IPV is an intentionally false or misleading action or statement as identified below in Subsections 702.01 through 702.08 of this rule. An IPV is established when a family member or the child care provider admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused family member or child care provider meets the terms of a court order or an agreement with the prosecutor. ()

01. False Statement. An individual makes a false statement to the Department, either orally or in writing, in order to participate in the Idaho Child Care Program. ()

02. Misleading Statement. An individual makes a misleading statement to the Department, either orally or in writing, to participate in the Idaho Child Care Program. ()

03. Misrepresentation of Fact. An individual misrepresents one (1) or more facts to the Department, either orally or in writing, to participate in the Idaho Child Care Program. ()

04. Concealing Fact. An individual conceals or withholds one (1) or more facts to participate in the Idaho Child Care Program. ()

05. Non-Compliance With Rules and Regulations. An individual fails repeatedly or substantially to comply with this chapter of rules. ()

06. Violation of Provider Agreement. An individual knowingly violates any term of his provider agreement. ()

07. Failure to Repay. An individual has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. ()

08. Failure to Meet Qualifications. A provider fails to meet the qualifications specifically required by this chapter of rules or by any applicable licensing board. ()

703. PENALTIES FOR AN IPV.

When the Department determines an IPV was committed, the party who committed the IPV loses eligibility for ICCP. If an individual has committed an IPV, the entire family is ineligible for child care benefits. If a child care provider has committed an IPV, the provider is ineligible to receive payments. The period of ineligibility for each offense, for both participants and providers, is as follows: ()

01. First Offense. Twelve (12) months, for the first IPV or fraud offense, or the length of time specified by the court. ()

02. Second Offense. Twenty-four (24) months for the second IPV or fraud offense, or the length of time specified by the court. ()

03. Third Offense. Permanent ineligibility for the third or subsequent IPV or fraud offense, or the length of time specified by the court. ()

704. FUNDING RESTRICTIONS.

If a funding shortfall is projected, the Department may reduce child care benefits to ensure that ICCP operates within its financial resources. ()

705. -- 799. (RESERVED).

PROVIDER ELIGIBILITY
(Sections 800 through 805)

800. CHILD CARE PROVIDER LICENSING.

All providers of child care who receive a Department subsidy must be licensed and must comply with: applicable State Day Care licensing requirements in Title 39, Chapter 11, Idaho Code; these rules; local licensing ordinances; or tribal ordinances. If both state requirements and ordinances apply to a provider, the provider must comply with the stricter requirement. A provider operating outside Idaho must comply with the licensing laws of his state or locality. ()

801. LIMIT ON PROVIDER PAYMENT.

ICCP will not pay for in-home child care if the provider lives at the same address as the child, unless the child care provider is a relative who is not acting "in loco parentis." A roommate, significant other, cousin, or any other individual that lives in the same home as the child will not be paid for providing child care. ()

802. HEALTH AND SAFETY REQUIREMENTS.

All providers must submit a written statement that they comply with the health and safety requirements listed in Subsections 802.01 through 802.10 of these rules. The provider must agree to a health and safety inspection. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. ()

01. Age of Provider. All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. ()

02. Sanitary Food Preparation. Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. ()

03. Food Storage. All food served in child care facilities must be stored to protect it from potential contamination. ()

04. Hazardous Substances. Medicines, cleaning supplies, and other hazardous substances must be stored out of the reach of children. ()

05. Emergency Communication. A telephone or some type of emergency communication system is required. ()

06. Smoke Detectors, Fire Extinguisher and Exits. A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. ()

07. Hand Washing. Each provider shall wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. ()

08. CPR/First Aid. Providers shall insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing and first aid treatment from a certified instructor. ()

09. Health of Provider. Each provider shall certify that he/she does not a communicable disease or have any physical or psychological condition that might pose a threat to the safety of a child in his/her care. ()

10. Child Abuse. Providers must report suspected child abuse to the appropriate authority. ()

803. CHILD CARE PROVIDER AGREEMENT.
All providers must sign and comply with a provider agreement. ()

804. CONVICTION OR WITHHELD JUDGMENT.
Child care providers must certify that they have not been convicted or received a withheld judgment, for any of the following crimes: homicide, kidnaping, arson, assault and battery, or sexual abuse of a child. A self-declaration must be signed by each provider, attesting he has not been convicted or received a withheld judgment for any of the above listed crimes, including the following: a sex crime as defined in Chapter 66, Title 18, Idaho Code, or any similar provision in another jurisdiction; rape as defined in Chapter 61, Title 18, Idaho Code, or any similar provision in another jurisdiction; injuring a child as defined in Section 18-1501, Idaho Code, or any similar provision in another jurisdiction; selling or bartering a child as defined in Section 18-1511, Idaho Code, or any similar provision in another jurisdiction; sexually abusing a child as defined in Section 18-1506, Idaho Code, or any similar provision in another jurisdiction; sexually exploiting a child as defined in Section 18-1507, Idaho Code, or any similar provision in another jurisdiction. ()

805. PURVIEW OF CHILD PROTECTIVE ACT OR JUVENILE JUSTICE REFORM ACT.
Providers must certify that they are not, through stipulation or adjudication, under the purview of the Child Protective Act, Section 16-1600, Idaho Code, or the Juvenile Corrections Act, Section 20-501 through 20-547, Idaho Code. Any person who has a valid child protection complaint cannot be a provider. ()

806. PARENT OR CARETAKER ACCESS TO CHILD CARE PREMISES.
Providers serving families who receive a child care subsidy shall allow parents or caretakers unlimited access to their children and to persons giving care, except that access to children will not be required if prohibited by court order. ()

807. REPORTING REQUIREMENTS FOR PROVIDERS.
A child care provider must report any of the following changes within ten (10) days: ()

01. Change in Provider Charges. The provider changes any rate for child care services. ()

02. Child Stops Attending Care. A child covered under ICCP stops attending child care, or is taken to another child care provider. ()

03. Change of Provider Address. The provider changes the location where child care is provided. ()

04. Change in Who Lives in Home. An individual who provides child care in his home must report when any other person moves into the home. ()

05. Intent Not to Renew License. The provider intends not to renew his license, or other required certifications. ()

808. -- 999. (RESERVED).

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.06 - EMPLOYERS REPORTS

DOCKET NO. 17-0206-0601

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(s) 72-508, 72-720, 72-721, 72-722, and 72,723, 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 18, 2006.

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:

- 1) To reconcile conflicting time periods by changing the second time period to fifteen (15) days from ten (10) days;
- 2) To allow sureties sufficient time to capture data they are required to submit on the Summary of Payments by extending the reporting time period from sixty (60) days to one hundred twenty (120) days;
- 3) To allow auditing of total and permanent benefit payments in a time frame within which useful feedback may be given and corrections made by changing the language of the rule to "...In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually..."

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact with the adoption of this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these are technical changes without any party known to be interested in negotiating any of these changes deemed to be non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mindy Montgomery 208-334-6000.

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 25, 2006.

DATED this 22nd Day of August, 2006.

Mindy Montgomery, Director
Industrial Commission
317 Main Street
P.O. Box 83720, Boise, ID 83720-0041
Phone: 334-6000 / Fax: 334-2321

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0206-0601

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 317 Main Street, 2nd Floor, Boise, ID 83702-7274. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 020. (RESERVED).

021. SUMMARIES OF PAYMENT.

01. Authority and Definitions. Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

a. "Commission," means the Idaho Industrial Commission. (2-20-95)

b. "Medical Only Claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)

c. "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)

d. "Impairment rated claim," means those claims in which a provider establishes an impairment rating for the injured worker. (2-20-95)

e. "Termination of disability," means the date upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. In the context of periodic payments in the ordinary course of business, the termination of disability shall occur on the date on which final payment is made to the claimant. (2-20-95)

f. "Death claim," means the injured worker died as a result of a work-related injury or occupational disease. (2-20-95)

g. "Employer" is defined in Idaho Code, Section 72-102(11) and includes agents of employers such as attorneys, sureties and adjusters. (2-20-95)

h. "Closure," means that the file will be retired following an audit by the Commission. (2-20-95)

02. Summaries Requirement. A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within ~~sixty~~ one hundred twenty (6120) days of termination of disability for all time-loss claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. In the case of medical and related benefits only cases, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the

same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any summary of payment filed with the Commission. (2-20-95)(_____)

03. Form. The summary of payment forms are available, pre-printed, from the Industrial Commission, which has designated the form as IC Form 6. The summary of payment shall be submitted on eight and one-half by eleven inch (8 1/2" X 11") paper in a format substantially similar to the following: (2-20-95)

a. For death claims: (2-20-95)

**SUMMARY OF PAYMENTS
FATAL CASE**

Surety No. _____ I.C. No. _____
Injured Person: _____ Employer: _____
Social Security Number: _____ Address: _____
Address: _____
Character of Injury: _____
Date of Accident: _____ Actual Weekly Wages: _____

DEPENDENTS

| Name of Dependent | Relationship | Date of Birth (if under 18) |
|-------------------|--------------|--------------------------------|
|-------------------|--------------|--------------------------------|

**AWARDS OF PAYMENTS
COMPENSATION**

| Payments % AWSW | Amount | Weeks | Total | Remarks |
|------------------------------|--------|-------|-------|---------|
| Total Compensation Payments: | | | | |

BURIAL AND OTHER EXPENSES

Payment for funeral expenses \$ _____ Payment to hospital(s) \$ _____
Payment to doctor(s) \$ _____ Payment for misc. \$ _____
Total Medical Expenses (do not include funeral expenses) \$ _____

COMMENTS:

Claims Examiner _____ Date _____

INDUSTRIAL COMMISSION APPROVAL

APPROVED: _____, 20__

BY: _____

b. For time-loss claims:

(2-20-95)

SUMMARY OF PAYMENTS
TIME-LOSS CASE

Surety No. _____ I.C. No. _____
Injured Person:
Social Security Number: _____ Employer:
Address: _____ Address:
Character of Injury:

Date of Accident: _____ Actual Weekly Wages:
Date Able to Resume Work: _____ Compensation
Rate:
Actual Time Lost: _____ Weeks Days
Date of First Payment:

AWARDS OF PAYMENTS

| Payments of Compensation | Amount | Type (TT or PP) |
|-----------------------------|------------|-----------------|
| Begin | Weeks Days | Return to Work |
| Payment of Medical Benefits | Amount | |
| Doctor(s) | | |
| Hospital(s) | | |
| Physical Therapy | | |
| Mileage | | |
| Miscellaneous | | |
| Comments: | | |

Claims Examiner _____ Date _____

INDUSTRIAL COMMISSION APPROVAL

APPROVED: _____, 20____

BY: _____

(2-20-95)

04. Approval. Within ninety (90) days of receipt of Summary of Payment as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster that such summary has been approved or shall notify of its inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive either an approval or request for additional information within the ninety (90) day period, the Employer/Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the ~~ten~~ fifteen (105) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (~~2-20-95~~)(____)

05. Changes in Status. In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within sixty (60) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. (2-20-95)

~~**06. Effective Date.** This rule shall become effective on August 15, 1994. (2-20-95)~~

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0602

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) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

| | | | |
|-----------------|-----------------------------------------------------------------|----------------------------------------------------------------|--------------------------------------------------------------------------|
| Date | October 11, 2006 | October 19, 2006 | October 25, 2006 |
| Time | 2:00 p.m. - 5:00 p.m. | 2:00 p.m. - 5:00 p.m. | 2:00 p.m. - 5:00 p.m. |
| Location | Ameritel Inn 333 Ironwood Ave. Coeur d'Alene, ID | Industrial Commission 317 Main Street Boise, ID | Ameritel Inn 2501 S. 25th East Idaho Falls, ID |

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 previously enacted temporary rule is improperly being applied to hospitals by some payors. This is outside the intent of the law. This proposed rule clarifies that it will not apply to hospitals. Also, the medical fee schedule in the temporary rule has caused some physicians to refuse to cooperate with the worker's compensation system, so the schedule is fine tuned in the proposed rule to respond to these concerns. The proposed rule clarifies that the fee schedule does not apply to hospitals and substitutes an alternative method to compute fees for hospitals. It reduces the number of conversion factors used for physician fees, and it allows health care providers to be fully paid after going through a dispute resolution process.

In April 2006 this rule adopted as a temporary rule with an effective date of April 1, 2006. The temporary rule was published in the Idaho Administrative Bulletin, Volume 06-4, April 4, 2006, pages 83 and 89. With this publication the Department is initiating proposed rulemaking.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the large number of potentially interested parties and the desire to hold public hearings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mindy Montgomery, Director, 208-334-6000.

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 25, 2006.

DATED this 22nd day of August, 2006.

Mindy Montgomery, Director
Industrial Commission
317 Main Street - PO Box 83720 , Boise, Id 83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

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 1, 2006.

The original text of the Temporary Rule was published in the Idaho
Administrative Bulletin, Volume 06-4, April 5, 2006, pages 83 through 89.

THE FOLLOWING IS THE TEXT TO DOCKET NO. 17-0208-0602

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 317 Main Street, 2nd Floor, Boise, ID 83702-7274. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 030. (RESERVED).

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby ~~substitutes~~ adopts the following ~~for the January 28, 1975 amendment to the "Rules and Regulations Governing Charges for Medical Services Provided under the Idaho Workers' Compensation Law," dated May 2, 1973~~ rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (6-1-92)()

~~01. Acceptable Charges Under the Idaho Workers' Compensation Law. Payors shall pay a Provider's reasonable charge for Medical Services furnished to industrially injured patients. (6-1-92)~~

021. Definitions. Words and terms used in this rule are defined in the subsections which follow. (6-1-92)

a. "Acceptable charge" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider, or the charge agreed to pursuant to written contract. ()

b. "Hospital" is any acute care facility providing medical or hospital services and which bills using a UB92 form. ()

i. Large hospital is any hospital with more than fifty (50) acute care beds. ()

ii. Small Hospital is any hospital with fifty (50) acute care beds or less. ()

~~c.~~ "Provider" means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical services related to the treatment of an industrially injured patient which are compensable under Idaho's Workers' Compensation Law. (6-1-92)()

bd. “Payor” means the legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (6-1-92)

ee. “Medical Services” means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities, equipment and supplies. (7-1-95)(____)

df. “Reasonable,” ~~except as provided in Subsections 031.02.g. and 031.02.h.,~~ means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below. (7-1-95)(____)

eg. “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (7-1-95)(____)

fh. “Customary” means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (7-1-95)(____)

~~**g.** *Provided, however, that for medical services which are not represented by CPT codes, reasonableness of charges shall be determined based on all relevant evidence available, including industry standards, invoices and catalog prices.*~~ (7-1-95)

~~**h.** *Provided, further, that where a Medical Service is one that is exceptional, unusual, variable, rarely provided, or so new that a determination cannot be made as to whether the charge for the Medical Service meets the criteria of Subsections 031.02.d. through 031.02.f. above, or where the Industrial Commission staff determines that its database is statistically unreliable, reasonableness of charges shall be determined based on all relevant evidence available.*~~ (7-1-95)

02. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services. (____)

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by providers other than hospitals. The standard for determining the acceptable charge for hospitals shall be: (____)

- i. For large hospitals: Eighty Percent (80%) of the reasonable charge. (____)
- ii. For small hospitals: Ninety-five percent (95%) of the reasonable charge. (____)

b. Conversion Factors. The following conversion factors shall be applied to the Relative Value Unit (RVU) found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

| CPT CODE: | DESCRIPTION: | CONVERSION FACTOR: |
|---------------|------------------------|--------------------|
| 00000 - 09999 | Anesthesia | \$ 58.19 |
| 10000 - 69999 | Surgery: | |
| 10000 - 19999 | Integumentary System | \$ 67.00 |
| 20000 - 29999 | Musculoskeletal System | \$ 110.00 |

| CPT CODE: | DESCRIPTION: | CONVERSION FACTOR: |
|----------------------|-------------------------------------------------------------|---------------------------|
| <u>30000 - 37799</u> | <u>Respiratory and Cardiovascular Systems</u> | <u>\$ 88.00</u> |
| <u>40000 - 49999</u> | <u>Digestive System</u> | <u>\$ 90.00</u> |
| <u>50000 - 59999</u> | <u>Urinary System</u> | <u>\$ 80.00</u> |
| <u>60000 - 69999</u> | <u>Nervous System, Eye & Ocular, Auditory</u> | <u>\$ 120.00</u> |
| <u>70000 - 99602</u> | <u>Other Than Surgery:</u> | |
| <u>70000 - 79999</u> | <u>Radiology</u> | <u>\$ 85.00</u> |
| <u>80000 - 89999</u> | <u>Pathology and Laboratory</u> | <u>To Be Determined</u> |
| <u>90281 - 96999</u> | <u>Medicine</u> | <u>\$ 60.00</u> |
| <u>97000 - 97799</u> | <u>Physical Medicine and Rehabilitation</u> | <u>\$ 44.00</u> |
| <u>97802 - 98943</u> | <u>Chiropractic and Other Medicine</u> | <u>\$ 43.00</u> |
| <u>98960 - 99602</u> | <u>Evaluation and Management and Miscellaneous Services</u> | <u>\$ 65.00</u> |

()

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Codes 01995 and 01996. ()

d. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted prior to the beginning of each state fiscal year (FY), starting with FY 2008. The Commission shall determine the adjustment, which shall equal the percent change in the all item consumer price index for the west urban area, as published by the U.S. Department of Labor, for the twelve-month (12) month period ending with December of the prior year. ()

e. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a CPT code, a currently assigned RVU or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant factors, as determined by the Commission. Where a service with a CPT Code, RVU and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.02.b., determine the reasonable charge for that service, based on all relevant factors in accordance with the procedures set out in Subsection 032.11. ()

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare & Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

- i.** Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()
- ii.** Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()
- iii.** Modifier 80: Twenty-five percent (25%) of coded procedure. ()
- iv.** Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD

assistants.

()

032. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority and Definitions. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule augmenting IDAPA 17.02.08.031 ~~(formerly 17.01.03.803.A, which became effective June 1, 1992)~~. The definitions set forth in IDAPA 17.02.08.031 are incorporated by reference as if fully set forth herein. (1-1-93)()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (1-1-93)

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of Medical Services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the Medical Service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with Subsection 032.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 032.11 for that service. (1-1-93)()

a. CPT and ICD Coding. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. (7-1-95)

b. Contact Person. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (1-1-93)

c. Report to Accompany Bill. If ~~required~~ requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04.322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 032.04 and 032.06, below, shall not begin to run until the Payor receives the Report. (7-1-95)()

04. Prompt Payment. If the Payor acknowledges liability for the claim and does not send a Preliminary Objection to, or Request for Clarification of, any charge, as provided in Subsection 032.06, below, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. ~~The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder.~~ (1-1-93)()

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 032.06 below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection and/or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ~~The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder.~~ (7-1-95)()

06. Preliminary Objections and Requests for Clarification. (1-1-93)

a. Preliminary Objection. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (1-1-93)

b. Request for Clarification. Where the Payor requires additional information, the Payor shall send a

written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (1-1-93)

c. Provider Contact. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (~~1-1-93~~)(____)

d. Failure of Payor to Object or Request or Provide Contact. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill and/or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 032.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (~~1-1-93~~)(____)

07. Provider Reply to Preliminary Objection and/or Request for Clarification. (1-1-93)

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection and/or Request for Clarification. (1-1-93)

b. Failure of Provider to Reply to Preliminary Objection. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (1-1-93)

c. Failure of Provider to Reply to Request for Clarification. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (1-1-93)

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part and/or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (1-1-93)

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (1-1-93)

10. Investigation of Claim Compensability. Where a Payor is investigating the compensability of a claim as to which a Provider has submitted a bill, the Payor must send a Notice of Investigation of Claim Compensability to the Provider and the Patient within fifteen (15) calendar days of receipt of the Provider's bill. The Payor shall complete its investigation of claim compensability and notify the Commission, the Provider and the Patient of its determination within thirty (30) calendar days of the date the Notice of Investigation of Claim Compensability is sent. Where a Payor does not timely notify the Commission, the Provider and the Patient of its determination, the Payor shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)

a. Single Objection Sufficient. A single objection stating that liability has been denied shall be sufficient for each Provider from whom a bill is received. (1-1-93)

b. Effect of Commission Determination of Claim Compensability. The thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall recommence running on the date of entry of a final Commission order determining that the claim is compensable. (1-1-93)

c. Effect of Determination of Compensability. If the Payor, absent a Commission determination of claim compensability, concludes that it is liable for a claim, the thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall begin running on the date the Payor notifies the Commission, Provider and Patient that it accepts liability for the claim. (1-1-93)

11. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial

Rule Re: Disputes Between Providers and Payors as Referenced in ~~IDAPA 17.02.08. Sections~~ 031 and 032 of this rule (formerly 17.01.03.803.a. and 803.b.). If Provider's motion prevails, Payor shall pay the amount found by the Commission to be owed plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. (1-1-93)()

12. Requirements Regarding Disputes Arising Before the Effective Date of This Rule. (1-1-93)

~~a. Written Demand Required. If, prior to January 1, 1993, a Payor notifies or has notified a Provider that it does not intend to fully pay any charge for Medical Services incurred prior to January 1, 1993, the Provider seeking payment for such charge must send a written Demand for Payment to the Payor no later than January 31, 1993. (Note: Should the matter ultimately proceed to the dispute resolution phase set forth in the Judicial Rule, the Commission will resolve the dispute by applying the administrative rule which was in effect at the time the charge was incurred. Hence, if the charge in dispute was incurred prior to June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.01.03.803, then in effect. However, if the charge in dispute was incurred on or after June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.02.08.031, now in effect.)~~ (1-1-93)

~~b. All Provisions of this Rule Will Apply. Such a Demand shall substitute for the bill and Report referenced in Subsection 032.03 above, and must contain all the information required by that section. Service of a timely Demand for Payment will bring the other provisions of this rule into operation.~~ (1-1-93)

~~c. Failure of Provider to Make Written Demand. Providers failing to make a written Demand for Payment within thirty (30) calendar days of the effective date of this rule shall be forever barred from invoking the Dispute Resolution Process set forth in the applicable Judicial Rule. Demands and/or billings submitted previously either to the Payor or to the Commission will not suffice.~~ (1-1-93)

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.27 - SELF-FUNDED EMPLOYEE HEALTH CARE PLANS

DOCKET NO. 18-0127-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

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 Idaho Code § 41-211 and Chapter 40, Title 41, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule deletes obsolete wording and implements changes to requirements for employer sponsored self-funded health plans made by House Bill 822. These changes include requirements for information to be submitted to the Department of Insurance to register the plan and requirements for maintaining and reporting reserves and surplus. In addition, changes have been made to conform the rule to Office of Administrative Rules standards.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Amends existing rule to incorporate changes to governing law made by House Bill 822.

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: The rulemaking does not impose a fee or charge.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes made by this rulemaking were needed to conform the existing rule to changes in governing law (HB 822).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Georgia Hill, 208-334-4314.

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 August 25, 2006.

DATED this 23rd day of August, 2006.

Shad Priest, Acting Director
Idaho Department of Insurance
700 West State St., 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0127-0601

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, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying ~~at cost in the main office of this agency in~~ accordance with the public records act. (4-5-00)(7-1-06)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 101 through 400. (4-5-00)(7-1-06)T

004. INCORPORATION BY REFERENCE.

There are no documents to be incorporated by reference. (7-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (7-1-06)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (7-1-06)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (7-1-06)T

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. (7-1-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-06)T

0057. -- 009. (RESERVED).

~~004~~010. DEFINITIONS.

All terms defined in Title 41, Chapter 40, Idaho Code, which are used in this rule shall have the same meaning as used in that Chapter. (4-5-00)

011. -- 020. (RESERVED).

~~010~~21. QUALIFICATION OF PLAN.

In order for a plan to qualify under Title 41, Chapter 40, Idaho Code, the plan's trust must be established by agreement between the employer or employers and the trustee of the trust, for the sole purpose of providing health care benefits to employees of the employer or employers. (4-5-00)(7-1-06)T

~~011~~22. REGISTRATION.

01. Registration Required. No self-funded plan, unless exempted from registration by Section 41-4003(2), Idaho Code, shall be organized and permitted to operate in the state of Idaho without securing a Certificate of Registration from the director of insurance. (4-5-00)

02. Specific Plans. Any plans covering the employees of a common employer shall be deemed to be a

single plan in respect to the exemption for registration allowed in Section 41-4003(2)(a), Idaho Code. Any combinations of plans under the effective control of a single administrator, trustee, and/or employer, or group of administrators, trustees and/or employers utilizing or attempting to utilize the exempt dollar amounts permitted under Section 41-4003(2)(a), Idaho Code in order to avoid registration of any such plans is deemed to be contrary to the intent of Chapter 40, Title 41, Idaho Code, and is expressly prohibited by this rule. (4-5-00)

03. Beneficiary Within State. Registration is required of Plans that cover any beneficiary working or residing within this state, unless the plans ~~is~~ are otherwise exempted by Section 41-4003(2), Idaho Code. (4-5-00)(7-1-06)T

023. APPLICATION FOR REGISTRATION.

01. Application. ~~In addition to the~~ The application must include each of the requirements set out in Section 41-4005, Idaho Code, a written statement of projected income and disbursements of the Fund for the twelve (12) month period commencing with the date of application must be filed with the application for registration. This statement must show the amount reserved as of the beginning and end of such period for claims incurred and not paid and incurred and not reported. The statement must be certified by an actuary who is a member of the American Academy of Actuaries. The certification must be projected income and disbursement statement referenced in Section 41-4005(2)(d), Idaho Code, must be certified by an actuary meeting the qualifications of Section 41-4005(6), Idaho Code, and accompanied by a description of assumptions used in projecting income and disbursements together with bases used to estimate amounts reserved for claims. (4-5-00)(7-1-06)T

02. Trust Agreement. (7-1-06)T

a. The trust agreement must comply with Title 41, Chapter 40, Idaho Code, and, to the extent not in conflict with Title 41, the trust agreement must also comply with Title 68, Idaho Code, and Title 15, Chapter 7, Idaho Code. The trust agreement must contain, at a minimum, the conditions set forth in Section 41-4004, Idaho Code. (7-1-06)T

b. The term irrevocable as used in Section 41-4004(1), Idaho Code, means that the plan sponsor cannot retain the power to alter, amend, revoke or terminate the transfer in trust. The trustee may, pursuant to the terms of the trust agreement, amend the terms of the trust agreement for the purpose of complying with applicable law. (7-1-06)T

03. Biographical Affidavit. The application must be accompanied by a biographical affidavit for each trustee on a form acceptable to the director. (7-1-06)T

0324. INVESTIGATION OF PROPOSED APPLICATION FOR REGISTRATION.

The director may make an investigation of matters accompanying the application for registration as deemed necessary including an examination specified in Section 41-4013, Idaho Code. Costs of any investigation and/or examination shall be borne by the trust fund of the plan. (4-5-00)

0425. CONTRIBUTIONS RECEIVABLE.

The trust fund may take credit in any financial statement for contributions receivable which are not in excess of ninety (90) days past due. (7-1-93)

0526. TRUST FUND RESERVES AND SURPLUS.

01. Reserve Requirements. The trust fund of the plan must continuously maintain reserves sufficient to fully fund payment of all benefits in effect at the time a claim thereunder arises. This reserve must adequately provide for all reasonably estimated future claim payments, adjustment expenses, and litigation expenses on claims which have arisen, including claims incurred but not reported, extended benefits and maternity benefits, if any. (7-1-93)

02. Reserves for Disability Income Benefits. Reserves established for disability income benefits shall be in an amount not less than reserves determined by application of factors in the 1964 Commissioner's Disability Table with interest at four percent (4%); the Minimum Reserve Standards for Group Health Insurance Contracts set

forth the in the NAIC's Accounting Practices and Procedures Manual as adopted by the director unless it can be ~~proved~~ proven to the satisfaction of the director that a lower reserve can be actuarially justified. ~~(7-1-93)~~(7-1-06)T

03. Certification by Actuary. Reserves must be certified annually by an actuary who ~~is a member of the American Academy of Actuaries, and~~ meets the requirements of Section 41-4005(6), Idaho Code, such certification must be accompanied by a statement describing bases used in reserve determination. The certification shall be in a form acceptable to the director. ~~(7-1-93)~~

04. Insolvent Condition. If determination of ~~reserves surplus~~ reveals ~~an insolvent condition~~ a deficiency in surplus, the director may, in his discretion, allow the plan a period of time ~~deemed adequate and reasonable~~ not exceeding ninety days to accumulate required ~~reserves surplus~~. The plan shall be deemed to be insolvent when the assets are not sufficient to meet all liabilities, including required reserves. ~~(7-1-93)~~(7-1-06)T

05. Surplus. The trust fund of a self-funded plan shall maintain a surplus equal to thirty percent (30%) of unpaid claim liability of the plan. The total unpaid claim liability to which the thirty percent (30%) is calculated against includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. A newly formed self-insured plan with no prior operating history shall maintain surplus of not less than ten percent (10%) of unpaid claim liability of the plan during the first year and not less than twenty percent (20%) of the unpaid claim liability of the plan during its second year of operation. The unpaid claim liability includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. (7-1-06)T

06. Letter of Credit. To qualify as surplus, the clean, irrevocable, unconditional and "evergreen" letter of credit must be issued by a qualified United States financial institution having a branch office in Idaho. Qualified financial institution shall have the same definition as set forth in Section 41-514(3), Idaho Code. (7-1-06)T

~~01627.~~ BONDING.

01. Certified Copy of Bond. A certified copy of the fidelity bond or equivalent coverage, as required under Section 41-4014(3), Idaho Code, shall be furnished to the director by the plan. ~~(4-5-00)~~(7-1-06)T

02. Cancellation of Bond Requirements. ~~Section 41-4014(3), Idaho Code, requires thirty (30) days advance notice, in writing, of the effective date of cancellation of a surety bond.~~ The bond must contain language stating that it is noncancellable except upon not less than thirty (30) days advance notice in writing to the trustee and the director. A copy of any notice cancelling a bond required under ~~the Act~~ Chapter 40, Title 41, Idaho Code, is to be forwarded to the director by the surety at the same time it is forwarded to the trustee. ~~(4-5-00)~~(7-1-06)T

~~01728.~~ ANNUAL STATEMENT.

The trustee shall file an annual statement within ~~sixty~~ ninety (90) days after the close of each fiscal year of the Plan and at such other time as may be determined by the Director. A quarterly statement shall be filed with the director within sixty (60) days of the end of each quarter in a form acceptable to the director. ~~(7-1-93)~~(7-1-06)T

~~01829.~~ SEVERABILITY CLAUSE.

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby. (7-1-93)

~~01930.~~ -- 999. (RESERVED).

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.28 - GOVERNMENTAL SELF-FUNDED EMPLOYEE HEALTH CARE PLANS

DOCKET NO. 18-0128-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

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 41-211, Idaho Code, and Chapter 41, Title 41, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is necessary to implement House Bill 825, which created requirements for registering, funding and operating self-funded health plans offered by public entities and created through joint powers agreements.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law.

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: The rule does not impose a fee.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is needed to implement changes to governing law (HB 825) that became effective July 1, 2006.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Georgia Hill (208) 334-4314.

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 August 25, 2006.

DATED this 23rd day of August, 2006.

Shad Priest, Acting Director
Idaho Department of Insurance
700 West State St, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0128-0601

IDAPA 18
TITLE 01
CHAPTER 28

18.01.28 - GOVERNMENTAL SELF-FUNDED EMPLOYEE HEALTH CARE PLANS RULE

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the director under Title 41, Chapter 2, Idaho Code. (7-1-06)T

001. TITLE AND SCOPE.

01. Title. This rule shall be cited in full as Idaho Department of Insurance Rule, IDAPA 18.01.28, "Governmental Self-Funded Employee Health Care Plans Rule." (7-1-06)T

02. Scope. The purpose of this rule is to supplement the provisions of Title 41, Chapter 41, Idaho Code, Joint Public Agency Self-Funded Health Care Plans by providing: (7-1-06)T

- a.** Dates of application for registration; (7-1-06)T
- b.** Requirements for application for registration; (7-1-06)T
- c.** Rules regarding investigation of applications; (7-1-06)T
- d.** Definition of required liabilities; and establishment of reserve bases; and (7-1-06)T
- e.** To provide an effective date. (7-1-06)T

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, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying in accordance with the public records act. (7-1-06)T

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General, Sections 100 through 400. (7-1-06)T

004. INCORPORATION BY REFERENCE.

There are no documents to be incorporated by reference (7-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (7-1-06)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (7-1-06)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (7-1-06)T

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. (7-1-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

All terms defined in Title 41, Chapter 41, Idaho Code, which are used in this rule shall have the same meaning as used in that Chapter. (7-1-06)T

011. -- 020. (RESERVED).

021. QUALIFICATION OF PLAN.

In order for a plan to qualify under Title 41, Chapter 41, Idaho Code, the plan's trust must be established by agreement between the public agency employers or joint powers entity and the trustee of the trust, for the sole purpose of providing health care benefits to employees of the public agency employer or employers. (7-1-06)T

022. REGISTRATION.

01. Registration Required. No self-funded plan, unless exempted from registration by Section 41-4103, Idaho Code, shall be organized and permitted to operate in the state of Idaho without securing a certificate of registration from the director of insurance. (7-1-06)T

02. Beneficiary Within State. Registration is required of plans that cover any beneficiary working or residing within this state, unless the plans are otherwise exempted by Section 41-4103, Idaho Code. (7-1-06)T

023. APPLICATION FOR REGISTRATION.

01. Application. The application must include each of the requirements set out in Section 41-4105, Idaho Code. The projected income and disbursement statement referenced in Section 41-4105(2)(d), Idaho Code, must be certified by an actuary meeting the qualifications of Section 41-4105(2)(d), Idaho Code, and accompanied by a description of assumptions used in projecting income and disbursements together with bases used to estimate amounts reserved for claims. (7-1-06)T

02. Joint Powers Agreement. The joint powers agreement must comply with Title 41, Chapter 41 and, to the extent not in conflict with Title 41, the joint powers agreement must also comply with Title 67, Chapter 23, Idaho Code. The joint powers agreement must contain, at a minimum, the conditions set forth in Section 41-4104, Idaho Code. (7-1-06)T

03. Trust Agreement. (7-1-06)T

a. The trust agreement must comply with Title 41, Chapter 41, Idaho Code and, to the extent not in conflict with Title 41, the trust agreement must also comply with Title 68, Idaho Code, and Title 15, Chapter 7, Idaho Code. The trust agreement must contain, at a minimum, the conditions set forth in Section 41-4104, Idaho Code. (7-1-06)T

b. The term irrevocable as used in Section 41-4104(1), Idaho Code, means that the plan sponsor cannot retain a power to alter, amend, revoke or terminate the transfer in trust. The trustee may, pursuant to the terms of the trust agreement, amend the terms of the trust agreement for the purpose of complying with applicable law. (7-1-06)T

04. Biographical Affidavit. The application must be accompanied by a biographical affidavit for each trustee on a form acceptable to director. (7-1-06)T

024. INVESTIGATION OF PROPOSED APPLICATION FOR REGISTRATION.

The director may make an investigation of matters accompanying the application for registration as deemed necessary including an examination specified in Section 41-4113, Idaho Code. (7-1-06)T

025. CONTRIBUTIONS RECEIVABLE.

The trust fund may take credit in any financial statement for contributions receivable which are not in excess of ninety (90) days past due. (7-1-06)T

026. TRUST FUND RESERVES.

01. Reserve Requirements.

(7-1-06)T

a. The trust fund of a self-funded plan in existence as of July 1, 2006 has three (3) years from July 1, 2006 to fully fund all actuarially required reserves. The trust fund must show progress towards coming in compliance with this requirement by a minimum twenty percent (20%) increase in funded reserves at the end of the first year from the effective date and a minimum of forty percent (40%) increase by the end of the second year from the effective date. At the end of the third year of the effective date and thereafter, the plan must continuously maintain reserves sufficient to fully fund payment of all benefits in effect at the time a claim thereunder arises. This reserve must adequately provide for all reasonably estimated future claim payments, adjustment expenses, and litigation expenses on claims which have arisen, including claims incurred but not reported, extended benefits and maternity benefits, if any. (7-1-06)T

b. The trust fund of a plan not in existence as of July 1, 2006, must continuously maintain reserves, pursuant to Section 41-4110, Idaho Code, from inception of the plan, that are sufficient to fully fund payment of all benefits at the time a claim thereunder arises. This reserve must adequately provide for all reasonably estimated future claim payments, adjustment expenses, and litigation expenses on claims which have arisen, including claims incurred but not reported, extended benefits and maternity benefits, if any. (7-1-06)T

02. Reserves for Disability Income Benefits. Reserves established for disability income benefits shall be in an amount not less than reserves determined by the Minimum Reserve Standards for Group Health Insurance Contracts set forth in the NAIC's Accounting Practices and Procedures Manual as adopted by the director, unless it can be proven to the satisfaction of the director that a lower reserve can be actuarially justified. (7-1-06)T

03. Certification by Actuary. Reserves must be certified annually by an actuary who meets the requirements of Section 41-4105(2)(d), Idaho Code, and such certification must be accompanied by a statement describing bases used in reserve determination. The certification shall be in a form acceptable to the director. (7-1-06)T

04. Insolvent Condition.

(7-1-06)T

a. For a self-funded plan in existence as of July 1, 2006, three (3) years after the effective date of Chapter 41, if the determination of reserves reveals an insolvent condition, the director may, in his discretion, allow the plan a period of time not exceeding ninety (90) days to accumulate required reserves. (7-1-06)T

b. For plans formed after July 1, 2006, if the determination of reserves reveals an insolvent condition, the director may, in his discretion, allow the plan a period of time not exceeding ninety (90) days to accumulate required reserves. (7-1-06)T

05. Insolvency. Insolvency means that the plan is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities, including required reserves. (7-1-06)T

027. BONDING.

01. Certified Copy of Bond. A certified copy of the fidelity bond or equivalent coverage, as required

under Section 41-4114(3), Idaho Code, shall be furnished to the director by the plan. (7-1-06)T

02. Cancellation of Bond Requirements. The bond must contain language stating that it is noncancellable except upon not less than thirty (30) days advance notice in writing to the trustee and the director. A copy of any notice cancelling a bond required under Chapter 41 is to be forwarded to the director by the surety at the same time it is forwarded to the trustee. (7-1-06)T

028. ANNUAL STATEMENT.

The trustee shall file an annual statement within ninety (90) days after the close of each fiscal year of the plan and at such other time as may be determined by the director. A quarterly statement shall be filed with the director within sixty (60) days of the end of each quarter in a form acceptable to the director. (7-1-06)T

029. SEVERABILITY CLAUSE.

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby. (7-1-06)T

030. -- 999. (RESERVED).

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 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 Sections 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 Section 54-912(4), 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 rule is being adopted as proposed. The complete text of the temporary and proposed rule was published in the May 3, 2006, Idaho Administrative Bulletin, Volume 06-5, pages 60 through 64.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of July, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P. O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

DOCKET NO. 19-0101-0601 - ADOPTION OF PENDING RULE

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 06-5, May 3, 2006, pages 60 through 64.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0602

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), 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 18, 2006.

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:

Effective as of August 1, 2006, the Idaho Board of Dentistry relocated to a new office space. The Administrative Rules of the Idaho Board of Dentistry must contain pertinent office information, including the Board of Dentistry's physical address. As such, Rule 5 of the Administrative Rules of the Board of Dentistry must be amended to remove the outdated office address and to include the Board of Dentistry's new office address.

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

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

NEGOTIATED RULEMAKING: Pursuant to 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 proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

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 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P.O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone) / (208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0602

005. OFFICE INFORMATION (RULE 5).

The Board of Dentistry office is located at ~~708 1/2 W. Franklin Street~~ 350 North 9th Street, Suite M-100, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0021. The telephone number of the Board is (208) 334-2369, the fax number is (208) 334-3247. ~~(3-15-02)()~~

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0603

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), 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 18, 2006.

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:

During the 2005 Idaho legislative session, statutes and rules were approved to authorize qualified dental hygienists to perform dental hygiene functions in extended access oral health care programs (typically, public and charitable dental programs). The Board of Dentistry now proposes to create and issue an extended access dental hygiene restorative license endorsement. The Board of Dentistry believes that persons treated in extended access oral health care programs would greatly benefit from efficiencies created by allowing qualified dental hygienists practicing under the direct supervision of a dentist to provide certain restorative treatment (placing fillings in a prepared tooth and carving, adjusting and contouring the fillings). At present, dental hygienists are not authorized to perform restorative treatment on a patient. In effect, a dentist could treat a greater number of patients in an extended access oral health care program if a dental hygienist could provide the restorative treatment (which now must be done by the dentist). To qualify for the restorative endorsement, an active status dental hygienist must successfully complete a specified clinical examination or hold an equivalent permit in another state. A qualified dental hygienist would have the extended access dental hygiene restorative endorsement placed on their existing dental hygiene license.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Information regarding this proposed rulemaking was previously provided to interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

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 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P.O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0603

026. -- 0287. (RESERVED).

028. VOLUNTEER DENTAL HYGIENE SERVICES (RULE 28).

A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances: ()

01. Extended Access Oral Health Care Program. The dental hygiene services must be performed in an extended access oral health care program under the supervision of a dentist who is employed or retained by or is a volunteer for the program; ()

02. Dental Hygiene Services Performed. The dental hygiene services performed shall be limited to oral health screening, preparation of health history, fluoride treatment, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventative agents, the application of pit and fissure sealants with recommendation that patient will be seen by a dentist and preventive dental health instruction; ()

03. Volunteers. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and ()

04. Volunteer Time Limit. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. ()

029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

01. Extended Access Dental Hygiene Endorsement. Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (4-6-05)

a. The person has been licensed as a dental hygienist during the two (2) year period immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

b. For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care program. (4-6-05)

~~**02d. Extended Access Dental Hygiene Endorsement Exception.** Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care program in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. (4-6-05)()~~

~~**03. Volunteer Dental Hygiene Services.** A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances: (4-6-05)~~

~~**a.** The dental hygiene services must be performed in an extended access oral health care program~~

~~under the supervision of a dentist who is employed or retained by or is a volunteer for the program;~~ (4-6-05)

~~**b.** The dental hygiene services performed shall be limited to oral health screening, preparation of health history, fluoride treatment, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventative agents, the application of pit and fissure sealants with recommendation that patient will be seen by a dentist and preventive dental health instruction;~~ (4-6-05)

~~**e.** The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and~~ (4-6-05)

~~**d.** The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month.~~ (4-6-05)

02. Extended Access Dental Hygiene Restorative Endorsement. Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access dental hygiene restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care program. Permissible restorative functions under this endorsement shall be limited to the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration. Upon application, the Board may grant an extended access dental hygiene restorative endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: ()

a. The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; or ()

b. The person holds an equivalent restorative permit in another state as of the date of endorsement application which required successful completion of the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board for its issuance; and ()

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under in an extended access oral health care program. ()

043. Renewal. Upon payment of the appropriate license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits. (7-1-06)T

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0604

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), 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 18, 2006.

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: Current Rule 40 of the Administrative Rules of the Board of Dentistry contains a number of subsections that identify behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. A violation of any provision in Rule 40 may provide a basis for taking disciplinary action against a dental or dental hygiene license. The Board of Dentistry proposes to amend existing Rule 40.18 to clarify the fact that unprofessional conduct not only includes the violation of a law governing dentistry but also includes the violation of any law pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry.

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

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

NEGOTIATED RULEMAKING: Pursuant to 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 proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

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 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P. O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0604

040. UNPROFESSIONAL CONDUCT (RULE 40).

A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (7-1-93)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

02. Unlicensed Practice. Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

03. Unlawful Practice. Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

04. Dividing Fees. A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

05. Controlled Substances. Prescribing or administering controlled substances not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

06. Harassment. The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

07. Discipline in Other States. Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

08. Altering Records. Alter a patient's record with intent to deceive. (7-1-93)

09. Office Conditions. Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)

10. Abandonment of Patients. Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

11. Use of Intoxicants. Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

12. Mental or Physical Illness. Continued practice of dentistry or dental hygiene in the case of

inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

- a. Mental illness; (7-1-93)
- b. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

13. Consent. Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)

14. Scope of Practice. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)

15. Delegating Duties. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)

16. Unauthorized Treatment. Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)

17. Supervision. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)

18. Legal Compliance. Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry. (~~3-18-99~~)

19. Exploiting Patients. Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)

20. Misrepresentation. Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)

21. Disclosure. Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)

22. Sexual Misconduct. Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)

23. Patient Management. Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)

24. American Dental Association Compliance. Failure by a dentist to comply with the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), as incorporated by reference in this chapter. (3-20-04)

25. American Dental Hygienists' Association Compliance. Failure by a dental hygienist to comply with the American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), as incorporated by reference in this chapter. (4-6-05)

IDAPA 22 - STATE BOARD OF MEDICINE

22.01.04 - RULES OF THE BOARD OF MEDICINE FOR REGISTRATION OF SUPERVISING AND DIRECTING PHYSICIANS

DOCKET NO. 22-0104-0601

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) 54-1804, 54-1806(2)(7) and (11), 54-1807(2), and 54-1814(5)(7) and (17), 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 18, 2006.

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:

These proposed rules add a new section for the registration of those physicians who are responsible for and supervise the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products that are exclusively non-incisive or non-ablative by medical personnel. The proposed rules add definitions, provide for the duties and responsibilities of supervising physicians of medical personnel providing such cosmetic treatments, including at those locations that are remote or non-medical, describes training requirements and outlines scope of cosmetic treatments of medical personnel. The legal authority for this change is found in Sections 54-1804, 54-1806(2) and (7) and 54-1814, Idaho Code.

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

The fee schedule has been broadened to include registration of supervising physicians of medical personnel who provide cosmetic treatments using prescriptive medical/cosmetic devices and products, however, there will be no increase in fees. This fee or charge is being imposed pursuant to Sections 54-1806(11) and 54-1807(2), Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted, however, input was obtained and principle issues were addressed during several open meetings with health care professionals, physicians who own or purchase prescriptive medical/cosmetic devices and products, spa owners and the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

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 25, 2006.

DATED this 22nd day of August, 2006.

Nancy M. Kerr, Executive Director
Idaho State Board of Medicine
1755 Westgate Drive
PO Box 83720, Boise, ID 83720-0058
(208) 327-7000, Fax (208) 327-7005

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0104-0601

000. LEGAL AUTHORITY.

Pursuant to Sections 54-1804, 54-1806(2)(7) and (11), 54-1807(1)(2), 54-1814(5)(7) and (17), 54-3902(7), and 54-3903, Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the activities of physicians and osteopathic physicians licensed in Idaho, who supervise the practice of physician assistants, graduate physician assistants, interns, externs, residents, ~~and~~ or athletic trainers or who supervise the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products by medical personnel. (4-6-05)(____)

001. TITLE AND SCOPE.

01. Title. The rules shall be cited as IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians." (3-16-04)

02. Scope. These rules govern the activities of physicians and osteopathic physicians licensed in Idaho, who supervise the practice of physician assistants, graduate physician assistants, interns, externs, residents, ~~and~~ or athletic trainers or who supervise the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products by medical personnel. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Alternate Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer in the temporary absence of the directing physician. (3-16-04)

02. Alternate Supervising Physician. An Idaho licensed physician who is registered with the Board pursuant to this chapter and who has full responsibility for the medical acts and practice of a physician assistant or graduate physician assistant in the temporary absence of the supervising physician. An alternate supervising physician shall not supervise more than three (3) such licensees contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (4-6-05)

03. Alternate Supervising Physician for Externs, Interns, and Residents. A physician licensed to practice medicine and surgery or licensed to practice osteopathic medicine and surgery in Idaho who has been designated by the supervising physician and approved by and registered by the Board to supervise the extern, intern, or resident in the temporary absence of the supervising physician. (3-16-04)

04. Alternate Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and/or products provided by medical personnel in the temporary absence of the supervising physician. An alternate supervising physician shall not supervise more than three (3) such medical personnel contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) medical personnel contemporaneously if necessary to provide adequate cosmetic treatments and upon prior petition documenting adequate safeguards to protect the public health and safety. (____)

045. Athletic Trainer. A person who has met the qualifications for licensure as set forth in Title 54, Chapter 39, Idaho Code, is licensed under that chapter, and carries out the practice of athletic training under the

direction of a designated Idaho licensed physician, registered with the Board. (3-16-04)

056. Board. The Idaho State Board of Medicine established pursuant to Section 54-1805, Idaho Code. (3-16-04)

067. Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. (3-16-04)

078. Extern. Any bona fide student enrolled in an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.03, who has not received his degree. (3-16-04)

089. Graduate Physician Assistant. A person who is a graduate of an approved program for the education and training of physician assistants and who meets all the requirements in IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants," for Idaho licensure but has not yet taken and passed the certification examination, and who has been authorized by the Board, as defined in IDAPA 22.01.03, Subsection 036.01, to render patient services under the direction of a supervising physician for a period of six (6) months or has passed the certification examination but who has not yet obtained a college baccalaureate degree, and who has been authorized by the Board, as defined in IDAPA 22.01.03, Subsection 036.02, to render patient services under the direction of a supervising physician for a period of not more than five (5) years. (3-16-04)

0910. Intern. Any person who has completed a course of study at an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.03, and who is enrolled in a postgraduate medical training program. (3-16-04)

11. Medical Personnel. An individual who provides cosmetic treatments using prescriptive medical/cosmetic devices and products that are exclusively non-incisive or non-ablative under the direction and supervision of a supervising physician registered with the Board, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. ()

102. Physician. A physician who holds a current active license issued by the Board to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restrictions upon or actions taken against his license. (3-16-04)

143. Physician Assistant. Any person duly licensed with the Board as a physician assistant to render patient services under the direction of a supervising physician registered with the Board, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. (3-16-04)

124. Resident. Any person who has completed a course of study at an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.03, and who is enrolled in a postgraduate medical training program. (3-16-04)

135. Supervising Physician. Any physician who is registered with the Board pursuant to this chapter and who supervises and has responsibility for the medical acts of and patient services provided by a physician assistant or graduate physician assistant. A supervising physician shall not supervise more than a total of three (3) such licensees contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (4-6-05)

146. Supervising Physician of Interns, Externs, or Residents. Any person approved by and registered with the Board who is licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho, who signs the application for registration of an extern, intern or resident, and who is responsible for the direction and supervision of their activities. (3-16-04)()

17. Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel. A supervising physician shall not supervise more than a total of three (3) such medical personnel contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) medical personnel contemporaneously if necessary to provide adequate cosmetic treatments and upon prior petition documenting adequate safeguards to protect the public health and safety. ()

(BREAK IN CONTINUITY OF SECTIONS)

023. SUPERVISING PHYSICIANS OF MEDICAL PERSONNEL.

Prescriptive medical/cosmetic devices and products penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation. Cosmetic treatments using such prescriptive medical/cosmetic devices and products is the practice of medicine as defined in Section 54-1803(1), Idaho Code. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. ()

01. Definitions. ()

a. Ablative. Ablative is the separation, eradication, removal or destruction of human tissue. ()

b. Incisive. Incisive is the power and quality of cutting of human tissue. ()

c. Cosmetic Treatment. An aesthetic treatment prescribed by a physician for a patient that uses prescriptive medical/cosmetic devices and products to alter human tissue. ()

d. Prescriptive Medical/Cosmetic Device. A federal food and drug administration approved prescriptive device that uses waveform energy including, but not limited to, intense pulsed light or lasers, to cosmetically alter human tissue. ()

e. Prescriptive Medical/Cosmetic Product. A federal food and drug administration approved prescriptive product whose primary intended use of the product is achieved through chemical action and cosmetically alters human tissue including, but not limited to, filler substances such as collagen or fat; lipo transfer; muscle immobilizers or sclerosing agents. ()

02. Duties and Responsibilities of Supervising Physicians. The supervising physician accepts full responsibility for cosmetic treatments provided by medical personnel using prescriptive medical/cosmetic devices and products and for the supervision of such treatments. The supervising physician shall be trained in the safety and use of prescriptive medical/cosmetic devices and products. ()

a. Patient Record. The supervising physician must document an adequate legible patient record of his evaluation and assessment of the patient prior to a cosmetic treatment. An adequate patient record must contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care including, but not limited to, a prescription for prescriptive medical/cosmetic devices and products. ()

b. Available Supervision. The supervising physician shall be on-site or immediately available to respond promptly to any questions or problems that may occur while a cosmetic treatment is being performed by medical personnel using prescriptive medical/cosmetic devices and products. Such supervision shall include, but is not limited to: ()

i. Periodic review of the medical records to evaluate the cosmetic treatments that are provided by such medical personnel including any adverse outcomes or changes in the treatment protocol; and ()

ii. Regularly scheduled conferences between the supervising physician and such medical personnel. ()

c. Scope of Cosmetic Treatments. Medical personnel providing cosmetic treatments are limited to using prescriptive medical/cosmetic devices and products that are exclusively non-incisive and non-ablative. The supervising physician shall ensure cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel shall be limited to and consistent with the scope of practice of the supervising physician. The supervising physician shall ensure medical personnel shall not independently provide cosmetic treatments using prescriptive medical/cosmetic devices and products. ()

i. The supervising physician shall ensure that, with respect to each procedure performed, the medical personnel possess the proper training in cutaneous medicine, the indications for the prescribed treatment, and the pre- and post-procedure care involved; and ()

ii. The supervising physician shall prepare a written protocol for medical personnel to follow when using prescriptive medical/cosmetic devices and products. The supervising physician is responsible for ensuring that the medical personnel use prescriptive medical/cosmetic devices and products only in accordance with the written protocol and do not exercise independent judgment when using prescriptive medical/cosmetic devices and products. ()

d. Training Requirements. Medical personnel who provide cosmetic treatments using prescriptive medical/cosmetic devices and products must have training and be certified by their supervising physicians on each device or product they will use. The training on each device or product must include the following: ()

i. Physics and safety of the prescriptive medical/cosmetic devices and products; ()

ii. Basic principle of the planned procedure and treatment; ()

iii. Clinical application of the prescriptive medical/cosmetic devices and products including, but not limited to, wavelengths to be used with intense pulsed light/lasers; ()

iv. Indications and contraindications for the use of the prescriptive medical/cosmetic devices and products; ()

v. Pre-procedure and post-procedure care; ()

vi. Recognition and acute management of complications that may result from the procedure or treatment; and ()

vii. Infectious disease control procedures required for each treatment. ()

viii. The supervising physician shall assure compliance with the training and reporting requirements of this rule. ()

ix. The supervising physician shall submit a "Certification of Training," upon a form provided by the Board, to the Board for approval prior to the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products by medical personnel. The Board may require the supervising physician to provide additional written information, which may include his affidavit attesting to the medical personnel's qualifications and clinical abilities to perform cosmetic treatments using prescriptive medical/cosmetic devices and products. This "Certification of Training" shall be sent to the Board and must be maintained on file at each practice location and at the address of record of the supervising physician. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. ()

e. Disclosure. It shall be the responsibility of each supervising physician to ensure that every patient receiving a cosmetic treatment using prescriptive medical/cosmetic devices and products by such medical personnel is aware of the fact that such medical personnel are not licensed physicians. This disclosure requirement can be

fulfilled by the use of name tags, correspondence, oral statements, office signs or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the medical personnel rendering such cosmetic treatments. ()

f. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of the supervising physicians at the locations and facilities in which medical personnel provide cosmetic treatments using prescriptive medical/cosmetic devices and products at such times as the Board deems necessary. ()

g. Patient Complaints. The supervising physician shall report to the Board of Medicine all patient complaints received against medical personnel which relate to the quality and nature of cosmetic treatments rendered. ()

h. Duties and Responsibilities Nontransferable. The responsibilities and duties of a supervising physician may not be transferred to a business entity, professional corporation or partnership, nor may they be assigned to another physician or person. ()

0234. -- 029. (RESERVED).

030. REGISTRATION BY SUPERVISING AND DIRECTING PHYSICIANS.

01. Registration and Renewal. Each supervising, directing and alternate physician must register with the Board and such registration shall be renewed annually. (3-16-04)

02. Notification. The supervising and directing physician must notify the Board of any change in the status of any physician assistant, graduate physician assistant, ~~or~~ athletic trainer or medical personnel for whom he is responsible, including, but not limited to, changes in location, duties, responsibilities, or supervision, or termination of employment within thirty (30) days of such event. (~~4-6-05~~)()

(BREAK IN CONTINUITY OF SECTIONS)

040. FEES.

Necessary fees shall accompany applications for registration and shall not be refundable. The fee for supervising physician registration will be fifty dollars (\$50) and the annual renewal fee will be twenty-five dollars (\$25); provided however, alternate supervising physicians shall not be required to pay an annual renewal fee. The fee for directing physician registration will be ten dollars (\$10) and the annual renewal fee will be five dollars (\$5); provided however, alternate directing physicians shall not be required to pay an annual renewal fee. (~~3-16-04~~)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-0601

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) 54-707, 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 18, 2006.

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:

Update the version of reference guidelines for peer review standards.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-0601

600. CHIROPRACTIC PEER REVIEW (RULE 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians. (7-1-98)

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho. (7-1-98)

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause. (7-1-98)

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause. (7-1-98)

02. Definitions. (7-1-98)

a. "Board" means the Idaho State Board of Chiropractic Physicians. (7-1-98)

b. "Patient" means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho. (7-1-98)

c. "Peer Review" means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care. (7-1-98)

d. "Peer Review Committee Members" shall mean those individuals appointed by the Board to serve on the Peer Review Committee. (7-1-98)

e. "Individual Reviewers" means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter. (7-1-98)

03. Committee Criteria. (7-1-98)

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall: (7-1-98)

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction; (7-1-98)

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho. (7-1-98)

iii. Obtain such peer review training as may be required by the Board. (3-15-02)

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee. (7-1-98)

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants. (7-1-98)

ii. The Board will notify those individuals who are named to the Committee of their appointment. (7-1-98)

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not: (7-1-98)

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-98)

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-98)

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-98)

04. Standards. (7-1-98)

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, 56th Edition, Robert E. Olson, D.C. (7-1-98)()

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-98)

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient's legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-98)

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-98)

07. Fees for Review. The following fees will be assessed: (7-1-98)

a. If review is requested by a patient: no charge. (7-1-98)

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-98)

i. One hundred twenty-five dollars (\$125) for a review of claims in the amount of one thousand dollars (\$1,000) or less; (3-30-01)

ii. Two hundred fifty dollars (\$250) for a review of claims in the amount of one thousand one dollars (\$1,001) or more and not exceeding three thousand dollars (\$3,000); (3-30-01)

iii. Three hundred fifty dollars (\$350) for a review of claims in the amount of three thousand one dollars (\$3,001) or more; (3-30-01)

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-98)

08. Procedures for Review. (7-1-98)

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-98)

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-98)

c. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-98)

d. The individual reviewers will conduct their evaluation, reach an agreement as to the outcome, and report that outcome to the chairman. If any of the parties desire to appeal this decision, they may within sixty (60) days of the decision notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report

the outcome to the chairman. There will be no further rights to appeal. Decisions of the individual reviewer will not be subject to challenge. (4-11-06)

e. The chairman will provide regular reports to the Board liaison. If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the Committee chairman will notify the Board liaison, immediately. The liaison will then refer the matter for further investigation and potential disciplinary action by the Board. (7-1-98)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY

DOCKET NO. 24-0401-0601 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 5, 2006.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-831, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 5, 2006
9:00 a.m.
Bureau of Occupational Licenses,
1109 Main St., STE 220, Boise, ID 83702

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Correct contact information; change hospital grade definition to comply with Idaho Code; add definition for patron; include examiner qualifications with board qualifications, add haircutter category to fee schedule, change examination fees to allow for administration by third party; add haircutter credit toward cosmetology license; designate haircutter requirements for examination; set theory examination criteria for haircutters; change rules for reexamination eligibility; set minimum hours for clinical services on patrons to comply with Idaho Code; and designate rules for schools teaching haircutting.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) b and c, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Title 54, Chapter 8 was changed in the last session of the legislature. This rule is needed to incorporate the change into board rule. Passage of this rule would allow payments to the examination administrator by applicants for the examination and to change the process of payment for examination. These rules also add provisions for a new category of licensure and fees for same.

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: Per Section 54-818 the haircutting fee is being included in the rules for original license and renewal. The examination is being clarified as the examination fees are paid to directly to the test administrator.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being done to comply with changes to Title 54, Chapter 8.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220, Boise, ID 83702
(208) 334-3233 / (208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 44-0401-0601

005. ADDRESS OF THE IDAHO BOARD OF COSMETOLOGY (RULE 5).

The office of the Board of Cosmetology is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us cos@ibol.idaho.gov. The Board's official web site is at ~~www2.state.id.us/ibol/cos~~ www.ibol.idaho.gov/cos.htm. (3-8-02)(6-5-06)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

These rules expressly adopt all definitions set forth in Section 54-802, Idaho Code, in addition to the following:

- (3-30-01)
- 01. Gender.** Any reference to a gender shall mean both masculine and feminine. (7-1-97)
 - 02. Board.** The Idaho Board of Cosmetology as prescribed in Section 54-802, Idaho Code. (7-1-97)
 - 03. Bureau.** The Bureau of Occupational Licenses, as prescribed in Section 54-828 and Section 67-2602, Idaho Code. (3-8-02)
 - 04. Chief.** The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-97)
 - 05. Current License.** An unexpired license in good standing. (7-1-97)
 - 06. Establishment.** A licensed cosmetological establishment. (7-1-97)
 - 07. Record of Instruction.** The final documentation of total hours and operations completed by a student that is maintained by a school or, in the case of an apprentice, the instructor. (3-30-01)
 - 08. Certificate of Graduation.** A signed, notarized statement from a school or, in the case of an apprentice, the instructor, which indicates that the student has fulfilled all requirements of that school or apprenticeship and is eligible for examination. (7-1-97)
 - 09. Rules.** The rules of the board. (7-1-97)
 - 10. School.** A licensed school of cosmetology. (7-1-97)
 - 11. School of Electrology.** A licensed school of cosmetology approved to teach electrology. (3-30-01)

12. Endorsement Certification. In accordance with Section 54-812, Idaho Code. (7-1-97)

13. Hospital Grade. Hospital grade means a ~~sanitizing~~ disinfecting agent registered by the Environmental Protection Agency as an effective germicidal/bactericidal, fungicidal, and virucidal disinfectant ~~when or any other equivalent agent that effectively frees instruments from infectious or otherwise harmful microorganisms.~~ Such agents must be used in accordance with the manufacturer's instructions. (~~7-1-97~~)(6-5-06)T

14. First-Aid Kit. First-aid kit means a packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze, which may be used for cleaning and protecting blood spills and other minor emergency traumas of the human body. (3-30-01)

15. Patron. Patron means any person who receives the services of anyone licensed or otherwise regulated by the provisions of Chapter 8, Title 54, Idaho Code. (6-5-06)T

011. -- 099. (RESERVED).

100. BOARD QUALIFICATIONS -- PROCEDURES -- MEETINGS -- POLICIES. (RULE 100).

01. Board Member and Examiner Qualifications. (~~7-1-97~~)(6-5-06)T

a. ~~The~~ All Cosmetology board members and examiners shall meet the requirements set forth in Section 54-829, Idaho Code. (~~7-1-97~~)(6-5-06)T

b. Cosmetology school representative: To be eligible for appointment to the Cosmetology Board the individual must: (7-1-97)

i. Currently hold a license as a cosmetologist in this state; and (7-1-97)

ii. For the three (3) years immediately preceding appointment meet the following requirements: (7-1-97)

(1) Monetary interest in school ownership; and (7-1-97)

(2) Actively involved in school management. (7-1-97)

c. Electrologist board member qualification requirements -- the Electrology board member shall: (3-30-01)

i. Be at least twenty-five (25) years of age; and (7-1-97)

ii. Be a resident of this state for at least five (5) years prior to appointment; and (7-1-97)

iii. Have been engaged in the practice of electrology for at least three (3) years immediately preceding appointment; and (3-30-01)

iv. Be a licensed electrologist under the provisions of this act. (3-30-01)

02. Board Meetings - Dates - Places. (7-1-97)

a. The board shall meet at least three (3) times a year in regular session beginning on the first Monday of February, June and October. (7-1-97)

b. Board meetings will be held in Boise, Idaho, at the Bureau. (7-1-97)

c. Dates and places of board meetings may be changed and other meetings scheduled by the action of a majority of the board. (7-1-97)

101. -- 124. (RESERVED).

125. FEES (RULE 125).

Fees are established in accord with Section 54-818, Idaho Code, as follows: (7-1-97)

01. Original Permits, Licenses, and Annual Renewals. (3-30-01)

a. Cosmetological establishment, original license -- Fifty dollars (\$50). (3-30-01)

b. Cosmetological establishment, annual renewals -- Thirty-five dollars (\$35). (3-18-99)

c. Retail cosmetics Dealer, original license -- Fifty dollars (\$50). (3-30-01)

d. Retail cosmetics dealer, annual renewals -- Thirty-five dollars (\$35). (3-18-99)

e. Makeover or glamour photography business, original license -- Fifty dollars (\$50). (3-30-01)

f. Makeover or glamour photography business, annual renewals -- Thirty-five dollars (\$35). (3-18-99)

g. Domestic school of cosmetology, original license -- Five hundred dollars (\$500). (3-30-01)

h. Domestic school of cosmetology, annual renewals -- One hundred fifty dollars (\$150). (7-1-97)

i. Registered cosmetologist, original license/annual renewals -- Twenty-five dollars (\$25). (3-18-99)

j. Nail technician, original license/annual renewals -- Twenty-five dollars (\$25). (3-18-99)

k. Apprentice, original license (no renewal fees required) -- Twenty dollars (\$20). (7-1-97)

l. Student certificate (registration) (no renewal fees required) -- Twenty dollars (\$20). (7-1-97)

m. Instructor, original license/annual renewals -- Thirty dollars (\$30). (3-18-99)

n. Student instructor permit - Twenty-five dollars (\$25). (3-30-01)

o. Electrologist, original license/annual renewals -- Twenty-seven dollars (\$27). (3-18-99)

p. Esthetician, original license/annual renewals -- Twenty-seven dollars (\$27). (3-18-99)

q. Haircutter, original license/annual renewals -- Twenty-five dollars (\$25) (6-5-06)T

~~r.~~ Endorsement fee -- One hundred dollars (\$100). (3-30-01)

~~s.~~ Temporary permit to demonstrate and teach -- Ten dollars (\$10). (3-30-01)

02. Examination Fees. An examination fee of seventy-five dollars (\$75) shall be required for each examination administered by the Board. The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator and shall be paid directly to the administrator by the applicant. (7-1-97)(6-5-06)T

~~a.~~ *As a registered cosmetologist -- Seventy five dollars (\$75).* (3-18-99)

~~b.~~ *As a nail technician -- Seventy five dollars (\$75).* (3-18-99)

~~c.~~ *As an instructor -- Seventy five dollars (\$75).* (3-18-99)

- ~~d.~~ ~~As an electrologist — Seventy-five dollars (\$75).~~ ~~(3-18-99)~~
- ~~e.~~ ~~As an esthetician — Seventy-five dollars (\$75).~~ ~~(3-18-99)~~
- 03. Fees Shall Not Be Prorated or Returnable.** Fees shall not be prorated or returnable. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

401. COSMETOLOGY REQUIREMENTS FOR LICENSURE BY EXAMINATION. (RULE 401).

01. Filing of Record of Instruction. Applicant must file Record of Instruction covering: two thousand (2,000) hours of instruction as a student, or four thousand (4,000) hours of instruction as an apprentice. (3-30-01)

02. Credit for Instruction. Credit for instruction as a student or apprentice will be given for each year of practical experience under licensure in another state, territory, possession, or country as follows: (3-30-01)

- a.** Two hundred (200) hours as a student, or four hundred (400) hours as an apprentice. (3-30-01)
- b.** Credit will be allowed only on six (6) month experience increments. (7-1-97)

03. Hours Credit Toward Licensure. (7-1-97)

a. A licensed nail technician shall be given credit of two hundred fifty (250) hours toward the required two thousand (2000) hours for a cosmetology course or five hundred (500) hours toward the required four thousand (4,000) hours as a cosmetology apprentice. (7-1-97)

b. A licensed esthetician shall be given credit of two hundred fifty (250) hours toward the required two thousand (2000) hours for a cosmetology course. (7-1-97)

~~**c.** A licensed haircutter shall be given credit of two hundred fifty (250) hours toward the required two thousand (2000) hours for a cosmetology course.~~ (6-5-06)T

~~**cd.** A nail technician student (not licensed) may receive eighty percent (80%) of accumulated hours, but no more than two hundred fifty (250) hours, as credit toward a student cosmetology course.~~ (7-1-97)

~~**de.** An esthetician student (not licensed) may receive eighty percent (80%) of accumulated hours, but no more than two hundred fifty (250) hours as credit toward a student cosmetology course.~~ (7-1-97)

~~**f.** A haircutter student (not licensed) may receive eighty percent (80%) of accumulated hours, but no more than two hundred fifty (250) hours, as credit toward a student cosmetology course.~~ (6-5-06)T

(BREAK IN CONTINUITY OF SECTIONS)

420. -- ~~44924.~~ (RESERVED).

425. HAIRCUTTER REQUIREMENTS FOR LICENSURE BY EXAMINATION (RULE 425).

01. Filing of Record of Instruction. Applicant must file Record of Instruction covering nine hundred (900) hours as a student. (6-5-06)T

02. Credit Given for Instruction. Credit given for instruction as a student will be ninety (90) hours as a student for each year of practical experience under licensure in another state, territory, possession or country. (6-5-06)T

03. Six Month Allowance for Credit. Credit will be allowed only on six (6) month experience increments. (6-5-06)T

04. Hours Credit Toward Licensure. One-seventh (1/7) of cosmetology student training hours may be credited toward haircutter instruction requirements. (6-5-06)T

426. -- 449. (RESERVED).

450. EXAMINATIONS - GENERAL (RULE 450).

Examination for licensure shall consist of both a practical and written examination for each of those disciplines included in Chapter 8, Title 54, Idaho Code. (5-3-03)

01. Dates and Places. (7-1-97)

a. Examinations for licensure are to be held at the discretion of the board. (7-1-97)

b. The dates and places of examination will be published annually. (7-1-97)

02. Written Examination. The written examination consists of two (2) parts: theory and Idaho jurisprudence. (7-1-97)

a. The Idaho jurisprudence examination will be a comprehensive written examination that will include Chapter 8, Title 54, Idaho Code and these rules. (5-3-03)

b. The theory examination will be the national examination provided by the National Interstate Council of State Boards of Cosmetology (NIC). (5-3-03)

i. The theory examination for cosmetology will include all phases of the art of cosmetology, hair dressing, manicuring and pedicuring, facial massage, and sanitation. (5-3-03)

ii. The theory examination for electrology will cover all phases of the art of electrology and sanitation. (5-3-03)

iii. The theory examination for esthetics will cover all phases of the art of skin care and sanitation. (5-3-03)

iv. The theory examination for nail technology will cover all phases of the art of manicuring, artificial nails, and sanitation. (5-3-03)

v. The theory examination for haircutter will cover all phases of the art of haircutting and sanitation. (6-5-06)T

vi. The theory examination for an instructor will cover all phases of the applicant's ability to teach cosmetology, nail technology, esthetics or electrology, and sanitation. (5-3-03)

03. The Practical Examination. The practical examination will be the NIC examination specific to the discipline for which licensure is sought. (5-3-03)

a. Oral Test. As authorized by Section 54-810, Idaho Code, the examiners may direct questions to individual examinees during the course of the practical examination. (7-1-97)

b. Supplies. Each applicant is required to bring adequate supplies and materials for the practical examination. Detailed information will be provided upon notification of acceptance for examination. (7-1-97)

04. Failure to Pass Examination. (7-1-99)

a. The practical examination is failed when an applicant obtains an average score below seventy-five percent (75%). Reexamination shall consist of the entire examination. (7-1-98)

b. Written examination is failed when the applicant obtains a score of below seventy-five percent (75%) on the national theory examination or the Idaho jurisprudence examination. Reexamination shall consist of the written examination on the portion or portions failed. (7-1-97)

05. Eligibility for Reexamination. A new application must be filed with the board. The prescribed fee must accompany said application. (7-1-97)

a. Additional instruction required to qualify for the practical reexamination shall be as follows: (5-3-03)

i. An applicant failing on the first practical examination attempt and on all subsequent attempts shall complete a full review of the proper practical procedures for those service applications in the discipline for which licensure is sought as outlined in Section 54-808(6), Idaho Code. The applicant must also sign an affidavit attesting to the completion of the review. The review and affidavit shall constitute proof of required additional instruction prior to ~~the first~~ reexamination ~~only~~. (5-3-03)(6-5-06)T

ii. ~~An applicant failing the practical examination on a second attempt and all subsequent attempts, shall complete additional instruction of no less than twenty percent (20%) of the hours required for original examination. The board may, following a review of previous examination scores, require any applicant to obtain additional instruction in a school of cosmetology.~~ (5-3-03)(6-5-06)T

b. Additional instruction required to qualify for the written reexamination shall be as follows: (5-3-03)

i. An applicant failing on the first written examination attempt and on all subsequent attempts in either the theory or Idaho jurisprudence examination shall complete a full review as applicable to the area or areas of failure, of either the proper theoretical procedures for the discipline and those service applications for which licensure is sought as outlined in Section 54-808(6), Idaho Code, or of the Idaho Laws and Rules governing the licensure and practice of those disciplines included in Chapter 8, Title 54, Idaho Code. The applicant must also sign an affidavit attesting to the completion of the review. The review and affidavit shall constitute proof of required additional instruction prior to the first reexamination only. (5-3-03)(6-5-06)T

ii. ~~An applicant failing either the theory examination or the Idaho jurisprudence examination on a second attempt and all subsequent attempts shall complete not less than forty (40) hours of additional instruction in theory or Idaho jurisprudence as is appropriate, in a curriculum approved by the board, in an Idaho licensed school, and comply with all other requirements for reexamination. The board may, following a review of previous examination scores, require any applicant to obtain additional instruction in a school of cosmetology.~~ (5-3-03)(6-5-06)T

06. Termination. All application records in the bureau of applicants who have not qualified for reexamination within five (5) years of notification of failure in any examination under the Cosmetology Law will be terminated and destroyed. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

500. RULES OF SCHOOLS OF COSMETOLOGY (RULE 500).

Section 54-808, Idaho Code, provides for the rules of schools of cosmetology. Supplementing this section, the board adopts the following rules: (7-1-97)

01. Application Before Opening and Operating a School. No school of cosmetology will be opened and/or operated until the board has issued its approval and a valid license has been received by the school. See Section 54-806, Idaho Code. Application for a school license shall be made on forms furnished by the board. The fully completed application to operate a school, with the required fee, shall be submitted to the board. (3-30-01)

a. As soon as practicable, upon receipt of said application, the board or its designated agent, will cause the school to be inspected. Based on this inspection, a recommendation for the issuance or rejection of a license will be made and a decision entered, within a reasonable time not to exceed thirty (30) days, after said application has been received. (7-1-97)

b. All new schools applying for license must have one thousand eight hundred (1,800) square feet of space. Schools approved to teach electrology refer to Rule 550. (7-1-99)

c. All new schools must be separated completely from establishments and have no connecting entrances. (3-30-01)

02. Adequate Space. Schools provide adequate space for the number of students to be trained in said schools. An additional forty (40) square feet of floor space shall be provided in excess of the minimum one thousand eight hundred (1800) square feet required for each student enrolled over twenty (20) students. (7-1-97)

03. Annual Review of Curriculum and Catalog. Schools must provide a curriculum and catalog to the board. Schools must provide a curriculum and catalog to the board for review on an annual basis. Curricula must be submitted at the time of license renewal. If there are no changes in the curriculum or catalog during the previous year, the school may submit a letter of explanation to the board. (7-1-97)

04. Minimum Two Hundred Hours of Instruction. ~~Student cosmetologists.~~ Students ~~cosmetologists~~ ~~may shall~~ not be permitted to render any clinical service to patrons until students have completed at least ~~two hundred (200)~~ five percent (5%) of the required hours of instruction, ~~nor clinical services considered to be possibly harmful or detrimental to patrons, such as tints, hair coloring, permanent waves and similar services, until the student has completed three hundred (300) hours of instruction.~~ (7-1-97)(6-5-06)T

05. Records Required. Records required of schools of cosmetology: (7-1-97)

a. Schools shall maintain records for each student as established by schools' policy and procedures which will show daily attendance and academic grades of instructional progress. (3-30-01)

b. Progress records shall be signed and dated by the student and school official. A copy of the signed and dated monthly record shall be provided to the student. The school shall maintain the records for a period of two (2) years following completion or termination of the student instruction. These records are subject to inspection by the board at any time. (3-30-01)

c. When a student's course of instruction at a school has been completed or terminated, the completed operations, and number of hours of instruction are to be recorded by the school on the Record of Instruction Form. This form is to be filed with the board by the school within sixty (60) days of the completion or termination of instruction, or a letter of explanation shall be filed with the board by the school as to why student's Record of Instruction is not being filed by the school. (3-30-01)

d. Schools shall maintain on the premises proof of student meeting education requirements. Schools must maintain proof of student having satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education. If student is a high school graduate, schools may accept a photostatic copy of the high school diploma or transcript. A letter written on high school stationary, signed by an officer of the high school, may be accepted to verify student's satisfactory completion of the tenth grade and eligibility to commence the eleventh grade. (7-1-97)

e. Proof of age must be submitted. Schools must maintain on their premises proof of students compliance with minimum age requirement. Acceptable proof of birth date will be a copy of the student's birth

certificate, a passport, military identification, drivers license or other similar form of documentation. (7-1-97)

f. Schools shall have a written (published) attendance policy. When a school is determining student hours for their course of instruction, a school may define its attendance policy to include one hundred percent (100%) attendance for the course length or may allow excused absences for not more than ten percent (10%) of the course length for satisfactory completion. (3-30-01)

06. Record of Instruction. A record of the operations completed by each student shall be maintained and include the following: (3-30-01)

a. Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; (3-30-01)

b. Scalp Treatments; (3-30-01)

c. Permanent Waves (All Methods); (3-30-01)

d. Haircutting/shaping which shall include scissor and razor/clipper; (3-30-01)

e. Bleaching; (3-30-01)

f. Tinting; (3-30-01)

g. Semi Permanent/Temporary Color; (3-30-01)

h. Frosting/Hilites; (3-30-01)

i. Facials which shall include plain, makeup and arches; (3-30-01)

j. Manicures which shall include plain and oil; (3-30-01)

k. Pedicures; and (3-30-01)

l. Artificial Nails. (3-30-01)

07. Discontinuance of School. If a school discontinues to operate as a school, records of instruction covering all students attending said school at the time of discontinuance or prior thereto, must be filed in the office of the board. (7-1-97)

08. Out-of-State Applicants. Applicants who have received instruction in out-of-state schools and who wish to complete instruction in an Idaho school are required to file with the board prior to applying for examination a copy of the record of instruction from the out of state school(s). For purposes of this section, the record of instruction will be a statement which gives detailed information regarding operations and hours of instruction, and which is to be verified by the licensing agency or school(s) in the state in which the instruction was obtained. (3-30-01)

09. Student Registration. Schools are required to register all students with the board ~~within five (5) days of~~ within five (5) days of beginning instruction ~~(post office cancellation date will be accepted).~~ Student registration fee must be submitted at time of registration. Students shall receive credit for only those instruction hours obtained after the date of registration. ~~(3-30-01)(6-5-06)T~~

10. Outside School Activities. Schools may allow a student credit for no more than thirty (30) hours per term for outside activities during the course of their instruction. These hours must be approved by the instructor. (3-30-01)

11. Probation for New Students. All students shall be required to serve a probationary period subsequent to registration with the Board in a school of cosmetology. Students must maintain acceptable attendance,

satisfactory progress in their instruction, and/or pass an examination at the end of the probationary period. If the student can not maintain these requirements, a written certified notification by the school shall be submitted to the board and the students registration shall become void immediately with no refund of fees. (3-30-01)

a. The probationary period for students in an approved program of less than an academic year of nine hundred (900) hours and/or less than fifteen (15) weeks shall be a minimum of five percent (5%) of course length. (3-30-01)

b. The probationary period for students, in an approved program greater than an academic year of nine hundred (900) hours and/or more than thirty (30) weeks shall be a minimum of ten percent (10%) of course length. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

571. -- 59974. (RESERVED).

575. RULES FOR COSMETOLOGY SCHOOLS TEACHING HAIRCUTTING (RULE 575).
Section 54-808, Idaho Code, provides for the teaching of haircutting in cosmetology schools. (6-5-06)T

01. Board Approval. The board may approve a school to teach haircutting who makes application on forms provided by the board and who meets all the requirements set forth in the cosmetology law and these rules. Approval of curriculum must be submitted on a separate application. Approval may be suspended or terminated by the board for the school's failure to meet any one or more of the minimum requirements set forth in the cosmetology law and rules to teach haircutting. (6-5-06)T

02. Records Required. (6-5-06)T

a. Records required of schools teaching haircutting shall be maintained in accordance with the records required for schools of cosmetology. (6-5-06)T

b. Students may not render any services to patrons until the student has completed at least five (5%) of the required hours of instruction. All work done on patrons must be completed by students and supervised by instructors. (6-5-06)T

03. Record of Training. A record of operations completed by each student shall be maintained of the following: (6-5-06)T

a. Haircutting and Hair shaping; (6-5-06)T

b. Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; (6-5-06)T

c. Use of cutting implements; (6-5-06)T

d. Basic shampooing and conditioning. (6-5-06)T

e. Sanitation (6-5-06)T

576. -- 599. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0601

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) 54-2406, 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 18, 2006.

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:

To require applicants to take and pass the examination within one year in an effort to keep applications current.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0501-0601

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required.

(3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience. (3-30-06)

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). (3-30-06)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. ()

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. (3-24-05)

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass a Class I exam. (3-30-06)

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and six (6) months of acceptable operator-in-training experience at a water distribution system. (3-24-05)

c. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. (3-24-05)

d. To qualify for a Class II treatment or lab analyst license an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (3-24-05)

e. To qualify for a Class III treatment or lab analyst license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

f. To qualify for a Class IV treatment or lab analyst license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

g. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)

h. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

i. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

j. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)

k. To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (3-24-05)

l. To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a board approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-30-06)

m. To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (3-24-05)

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-24-05)

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)

e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)

b. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) year post high school education. (3-24-05)

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (1/2) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

- a.** Experience as an environmental or operations consultant; (3-24-05)
- b.** Experience in an environmental or engineering branch of federal, state, county, or local government; (3-24-05)
- c.** Experience as a wastewater collection system operator; (3-24-05)
- d.** Experience as a wastewater treatment plant operator; (3-24-05)
- e.** Experience as a water distribution system operator and/or manager; (3-24-05)
- f.** One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)
- g.** Experience in waste treatment operation and maintenance. (3-24-05)

06. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)

- a.** High School - High School diploma = GED or equivalent as approved by the board = four (4) years. (3-24-05)
- b.** College - Thirty-five (35) credits = one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the board). (3-24-05)
- c.** Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = one (1) CEU; forty-five (45) CEUs = one (1) year of college. (3-24-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

DOCKET NO. 24-0701-0601 (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 Section(s) 54-3003, 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 18, 2006.

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:

To increase the original license fee and annual renewal fee from \$125 to \$150.

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

To increase the original license fee and annual renewal fee from \$125 to \$150.

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

There is no impact on general funds. This change could have a positive impact of \$5650 on dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0701-0601

400. FEES (RULE 400).

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements.

(7-1-93)

01. Application Fee. Application Fee (Original-Reapplication-Endorsement) One hundred dollars (\$100). (3-20-04)

02. Examination Fees. Examination fees will be as established by the council of landscape architectural registration boards. (3-20-04)

03. Original License and Annual License Fee. Original license and annual license fee -- One hundred ~~twenty-five~~ thirty dollars (\$1250). (~~3-24-05~~)

04. Reinstatement Fee. Reinstatement fee -- Twenty-five dollars (\$25). (7-1-93)

05. Processing Fee. Applicants for examination must submit a twenty-five dollar (\$25) processing fee, together with the examination fees and the application fee. (3-20-04)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 24, 2006.

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) 54-1604, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) b and c, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement to allow for qualified administrators to protect the public.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-0601

300. ENDORSEMENT (RULE 300).

Each applicant for licensure by endorsement shall be required to document compliance with each of the following requirements. (4-6-05)

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state. (4-6-05)

02. Experience/Education. (4-24-06)T

a. ~~Two~~ One (21) years of ~~practice as a licensed nursing home~~ experience as an administrator in training in another state; or ~~(4-6-05)~~(4-24-06)T

b. A total of one (1) year of combined experience obtained in an administrator in training program and from practical experience as an administrator in another state; or (4-24-06)T

c. A master's degree in health administration related to long-term care from an accredited institution; or (4-24-06)T

d. A master's degree in health administration from an accredited institution and one (1) year management experience in long-term care. (4-24-06)T

03. Criminal History. Has not been found guilty or convicted or received a withheld judgment or suspended sentence for any felony or any crime involving moral turpitude or received discipline for a license offense in any state. (4-6-05)

04. National Examination. Has taken and successfully passed the NAB examination. (4-6-05)

05. State Examination. Has taken and successfully completed the state of Idaho examination. (4-6-05)

06. Affidavit. Has certified under oath to abide by the laws and rules governing the practice of nursing home administration in Idaho. (4-6-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-0601

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) 54-1509, 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 18, 2006.

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:

Revise examination requirements and length of work experience required for endorsement, revise continuing education to include observation and the use of excess hours, update the code of ethics, and revise the contents of prescriptions.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1001-0601

275. ENDORSEMENT (RULE 275).

01. Endorsement. Any person who presents to the Board of Optometry a certified copy of a certificate or license of registration which he holds in good standing in another state or a foreign country, which state or foreign country has similar requirements for licensing or registration as is provided for new applicants in Idaho (including therapeutic privileges), may apply to the Board for the issuance of a license to practice optometry in the state of Idaho. (4-5-00)

02. Conditions to be Granted a License. The right to be granted a license to practice optometry in Idaho is also subject to the following conditions set out below: (7-1-93)

a. The submission of a completed application meeting the requirements of Subsection 175.01 including the applicable fee. (4-5-00)

b. That the license or certificate of registration of the applicant shall not have been suspended or revoked by any state or country or subject to any pending or unresolved licensure action in any state or country. That the applicant must not have committed any act which would constitute a violation of the Optometry Act or Board Rules. (4-5-00)

c. ~~That for those licensed in another state after January 1, 1986 the applicant has successfully passed the "Treatment and Management of Ocular Disease Examination" administered by the Association of Regulatory Boards of Optometry and completed and returned the state of Idaho law examination.~~ For those licensed in another state ~~before January 1, 1986~~ the applicant must document to the Board for approval, the education, training, and examination for diagnostic and therapeutic privileges in the other state and return the state of Idaho law examination. (3-20-04)(____)

d. That the applicant has been engaged in the practice of optometry continuously for ~~not less than three (3) of the last five~~ four (4) years. (4-5-00)(____)

276. -- 299. (RESERVED).

300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).

01. Hours Required, Advance Approval. Each optometrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of twelve (12) full hours of post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses would be approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (8-24-94)

02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of six (6) additional full hours of post-graduate optometric courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (7-1-93)

03. Correspondence/Home Study Courses/Observation. The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained ~~through the mail or~~ from "home study" courses or observation. (8-24-94)(____)

04. Waiver of Requirements. The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist's ability to practice or inability to conform to the rules due to military duty. (3-15-02)

05. Renewal Application Form. Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

06. Audit. The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

07. Documentation of Attendance. It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (3-20-04)

08. Excess Hours. Continuing education hours, not to exceed six (6) hours, accumulated during the twelve (12) months immediately preceding a license renewal may be applied toward meeting the continuing education requirement for the following license renewal. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. ()

301. -- 324. (RESERVED).

325. CODE OF ETHICS (RULE 325).

01. Patient's Visual Welfare. The licensed optometrist shall keep the patient's visual welfare uppermost in his consideration at all times and promote the best methods of care for the visual needs of mankind. (7-1-93)

02. Confidentiality. The optometrist shall preserve information concerning his patients in confidence and not release that information unless authorized by the patient. An optometrist may, however, supply information of an otherwise confidential or privileged nature when lawfully subpoenaed to testify at a deposition or hearing in any proceeding before the Board of Optometry, or at any other time and place ordered by a court of law. (7-1-93)

03. Conduct of Practice. The optometrist shall conduct his practice in a dignified and professional manner and in keeping with the mode of practice of a professional person entrusted with the care of the health of citizens of this state and shall abide by the rulings of the Board of Optometry. (7-1-93)

04. Unprofessional Conduct. In order to define what constitutes unprofessional conduct, the board ~~hereafter lists and~~ sets forth certain prohibited actions. In conducting his practice, an optometrist must not: (7-1-93)()

a. Practice optometry in any manner other than as a professional person in an individual capacity, or in partnership with or associate with other licensed health care professionals, ~~under his own name and not as a corporation or officer or agent of a corporation or other business entity.~~ An optometrist may be a stock holder in and practice as a member of a professional service corporation with other licensed health care professionals as authorized by Title 54, Chapter 15, Idaho Code, but the optometrist must list his individual name as well as any name selected for the professional service corporation on any letterheads, telephone directories, office or building directories, or other places where the general public might be advised of the fact that the individual is practicing optometry, as required by these rules. (3-15-02)()

b. Use either "Cappers" or "Steerers" or accept a split or divided fee for the purpose of obtaining

patients or use solicitors or agents for the purpose of securing patients or conducting eye examinations or furnishing optometric services. (7-1-93)

~~*e.* Make or conspire to make any arrangement, agreement, or engage in any practice whereby a supplier of ophthalmic materials shall: (7-1-93)~~

~~*i.* Provide office space for an optometrist. (7-1-93)~~

~~*ii.* Pay rent upon the office space occupied by an optometrist. (7-1-93)~~

~~*iii.* Pay the professional fees of an optometrist. (7-1-93)~~

~~*iv.* Pay for the advertising for an optometrist. (7-1-93)~~

~~*v.* Pay commissions to an optometrist upon ophthalmic materials furnished by such optometrist to his patients. (7-1-93)~~

~~*vi.* Consistently refer prospective purchasers of ophthalmic materials to an optometrist in violation of the law. (7-1-93)~~

~~*dc.* Allow his prescription files and records to be used by any unlicensed person, firm, or corporation for the practice of optometry. (7-1-93)~~

~~*e.* As a regular pattern of practice, accept referrals from retail optical outlets that violate section 54-1525, Idaho Code, pertaining to referral of patients, or which are located in close proximity to the optometrist's office for the purpose of inducing consistent patronage of his services because of location of office rather than professional reputation. (7-1-93)~~

~~*fd.* Fail to perform services for which fees have been received. (7-1-93)~~

~~*ge.* File false reports of services performed or fees rendered. (7-1-93)~~

~~*hf.* Permit the use of his name or professional title by or in conjunction with any person not an optometrist, or any firm, company, corporation or military association which illegally practices or in any manner holds himself or itself out to the public as being entitled to practice the profession of optometry when not licensed to do so under the law of Idaho or which uses the title "Optometric Services" in such a manner in advertising as to convey to the public the impression that the individual or corporation is entitled to practice optometry or furnish optometric advice or services when not so authorized by law. (7-1-93)~~

~~*ig.* Enter into or continue in a contract, agreement, or understanding of any kind, or engage in any course of conduct with any person, firm or corporation, or their agents, whereby said optometrist expressly or impliedly agrees: (7-1-93)~~

~~*i.* To refer the patient back to said person, firm, or corporation referring the patient for any subsequent service or receipt of ophthalmic material. (7-1-93)~~

~~*ii.* That if any patient is referred by any person, firm or corporation to the optometrist, the optometrist will refrain from supplying to the patient any ophthalmic materials. (7-1-93)~~

~~*jh.* Directly or indirectly give any person, association, firm or corporation, or their agents, anything of pecuniary benefit or value as consideration for the referral of any patient to said optometrist. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTENTS OF PRESCRIPTION (RULE 450).

Every prescription written or issued by an optometrist practicing in Idaho shall contain at least the following information: (7-1-93)

01. Prescription for Spectacles. Prescriptions for spectacles shall contain the following: (7-1-93)

a. Sphere, cylinder, axis, prism power and additional power, if applicable; and (~~7-1-93~~)()

~~**b.** Position of optical center or interpupillary distance;~~ (~~7-1-93~~)

~~**c.** Seg type; and~~ (~~7-1-93~~)

~~**d.** Expiration date of the prescription.~~ (7-1-93)

02. All Prescriptions for Rigid Contact Lenses. All prescriptions for rigid contact lenses shall contain at least the following information: (7-1-93)

a. Base curve; (7-1-93)

b. Peripheral curve or curves including width; (7-1-93)

c. Overall diameter; (7-1-93)

d. Optical zone diameter; (7-1-93)

e. Power; and (~~7-1-93~~)()

~~**f.** Center thickness;~~ (~~7-1-93~~)

~~**g.** Color; and~~ (~~7-1-93~~)

~~**h.** Expiration date of the prescription.~~ (7-1-93)

03. All Prescriptions for Soft Contact Lenses. All prescriptions for soft contact lenses shall contain at least the following information: (7-1-93)

a. Lens manufacturer or "brand" name; (7-1-93)

b. Series or base curve; (7-1-93)

c. Power; (7-1-93)

d. Diameter, if applicable; (7-1-93)

e. Color, if applicable; and (7-1-93)

f. Expiration date of the prescription. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-0601 (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 Section(s) 54-2305, 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 18, 2006.

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:

Update contact information, increase the fee for renewal of licenses and service extender applications, remove fee references from service extender section and place them in fee section, and correct typographical error.

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

The fee for renewal of licenses is being increased from \$225 to \$300 and the service extender application and renewal fee is being increased from \$50 to \$100.

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

There is no impact on general funds. This change could have a positive impact of \$31,225 on dedicated funds for the Board.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0601

005. ADDRESS OF THE IDAHO BOARD OF PSYCHOLOGIST EXAMINERS (RULE 5).

The office of the Board of Psychologist Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~psy@ibol.state.id.us~~ psy@ibol.idaho.gov. The Board's official web site is at ~~http://www.ibol.idaho.gov/psy.htm~~ (3-24-05)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

- 01. Annual Renewal Fee.** Annual renewal fee -- ~~two~~ three hundred ~~twenty-five~~ dollars (\$~~225~~300). (7-1-93)
(3-24-05)(_____)
- 02. Application Fee.** Application fee -- two hundred dollars (\$200). (7-1-93)
- 03. Service Extender Application Fee.** Application fee -- one hundred dollars (\$100). (_____)
- 04. Service Extender Annual Renewal Fee.** Annual renewal fee -- one hundred dollars (\$100). (_____)
- 035. Examination and Reexamination Fee.** Examination and reexamination fees shall be those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). (5-3-03)
- ~~**04. Endorsement Fee.** Endorsement fee -- one hundred dollars (\$100) as established by Section 54-2312, Idaho Code. (5-3-03)~~
- 056. Examination, and Reexamination ~~or Endorsement Fee~~ in Addition to Application Fee.** The examination, or reexamination, ~~or endorsement~~ fee shall be in addition to the application fee and must accompany the application. (3-15-02)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (RULE 450).

The board recognizes that licensed psychologists may choose to extend their services by using service extenders. The board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

- 01. General Provisions for Licensed Psychologists Extending Their Services Through Others.** (7-1-93)
- a.** The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)
- i.** Have the authority to cause termination of compensation for the service extender. (7-1-93)
- ii.** Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)
- b.** The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)
- i.** Within thirty (30) days after employing the service extender, formulate and provide to the board a written supervisory plan for each service extender. The plan shall include provisions for supervisory sessions and

chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and ~~an~~ appropriate application fee ~~of fifty dollars (\$50)~~. (7-1-93)()

ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

02. Qualifications for Service Extenders. (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a master's degree from a program in psychology, counseling, or human development as determined by the board. (7-1-93)

03. Conditions for Use of Service Extenders. (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist," etc. (7-1-93)

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations,

licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from these provisions. Without notification to the board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the board on written request by the licensed psychologist to the board. (7-1-93)

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit for each service extender ~~a fee of fifty dollars (\$50)~~ the appropriate fee together with certification to the board that they possess: ~~(3-20-04)~~(____)

i. A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

iii. An updated plan for the supervision of each of his service extenders. (3-20-04)

m. Documentation of supervisory contact, hours of supervision, hours of extender services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the board upon request. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

600. GUIDELINES FOR THE SUPERVISION IN THE EDUCATION OF PSYCHOLOGISTS (RULE 600).

The board recognizes the importance of supervision in the education of psychologists, and that licensed psychologists within Idaho may be called on to provide supervision. It also recognizes that differing levels of supervision are

appropriate for persons with differing levels of education and experience. Accordingly, the board identifies three (3) levels within the education of psychologists, and specifies differing levels of supervision for each. These categories refer to persons pursuing a program of activities which, when completed, will allow them to meet the requirements for licensure as ~~psychologists~~ psychologists in Idaho. When providing supervision, the licensed supervising psychologist may receive compensation from the supervisee or other interested party, and shall be responsible to insure that supervision appropriate to the education and experience level of the supervisee is provided. Further, the licensed supervising psychologist shall also be responsible to insure that the appropriate documentation for a particular supervisee has been provided to the board as specified below. The number of persons a psychologist may supervise within the three educational levels does not limit the number of service extenders as specified under Subsection 450.03.j. (7-1-93)()

- 01. General Provisions.** General provisions for licensed supervising psychologists. (7-1-93)
 - a.** The licensed supervising psychologist exercising administrative control shall: (7-1-93)
 - i. Have the authority to cause termination of compensation for the supervisee when compensation is provided. (7-1-93)
 - ii. Have the authority to cause the suspension or removal of the supervisee from his position as a service provider. (7-1-93)
 - b.** The licensed supervising psychologist exercising professional direction shall: (7-1-93)
 - i. Within thirty (30) days after initiating supervision, formulate a written supervisory plan for each supervisee. The plan shall include provisions for supervisory sessions and chart review. If the supervising psychologist requires tapes to be made of psychological services delivered by the supervisee, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the supervisee. (7-1-93)
 - ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face individual supervisory contact by a licensed psychologist with the supervisee for each one (1) to twenty (20) hours of services provided by the supervisee during any calendar week. A written record of this supervisory contact, including the type of activities conducted by the supervisee, shall be maintained by the licensed supervising psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are provided or during the week following. In no case will services be provided more than two (2) weeks without supervisory contact between the supervisee and a licensed supervising psychologist. (7-1-93)
 - iii. Provide the supervisee a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the supervisee of his intention to abide by them. (7-1-93)

- 02. Category II -- Psychologist in Training.** (7-1-93)
 - a.** Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the board to have either: (7-1-93)
 - i. Obtained a doctoral degree after completing an educational program which satisfies all the requirements of Section 500; or (7-1-93)
 - ii. Obtained a doctoral degree and submitted a plan, approved by the board for the completion of any deficiencies in their doctoral education with regard to the requirements of Section 500. (7-1-93)
 - b.** Verification: The State Board of Psychologist Examiners has reviewed the application of the person in question and either: (7-1-93)
 - i. Verifies that the applicant has obtained a doctoral degree after completing an educational program which satisfies all the requirements of Section 500; or (7-1-93)

ii. Verified the applicant obtained a doctoral degree and approved a plan submitted by the applicant for the completion of any deficiencies in his doctoral education with regard to the requirements of Section 500. (7-1-93)

c. Supervision Requirements: (7-1-93)

i. Psychologists in Training must be under the direct and continuing administrative control and professional direction of the licensed supervising psychologist when providing psychological services. (7-1-93)

ii. Work assignments shall be commensurate with the skills of the Psychologist in Training and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)

iii. Psychologists in Training shall be housed in the service delivery site of the licensed supervising psychologist, and at least fifty percent (50%) of the Psychologist in Training's service delivery will occur while the licensed supervising psychologist is physically present on site; excepting that where Psychologists in Training are employed by agencies or corporations financed by public funds, licensed supervising psychologists may apply for exemption of this requirement. Exemptions will be made on review of the written supervisory plan, and granted at the discretion of the board. (7-1-93)

iv. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the licensed supervising psychologist or his institutional affiliate. (7-1-93)

v. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate, excepting that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)

vi. All persons receiving services from a Psychologist in Training shall sign a written notice indicating their understanding that the service provider is a Psychologist in Training and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)

vii. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category II Psychologist in Training. (7-1-93)

03. Category III -- Psychologist Under Supervision. (7-1-93)

a. Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the board to have: (7-1-93)

i. Obtained a doctoral degree, and completed an educational program which satisfies all the requirements of Section 500; and (7-1-93)

ii. Completed the EPPP examination with a passing score. (7-1-93)

b. Verification: The State Board of Psychologist Examiners has reviewed the application and: (7-1-93)

i. Verified the applicant has obtained a doctoral degree and completed an educational program which satisfies all the requirements of Section 500; and (7-1-93)

ii. Verified the applicant has completed the EPPP examination with a passing score. (7-1-93)

c. Supervision Requirements: (7-1-93)

i. Psychologists Under Supervision shall be under the continuing professional direction, though not necessarily administrative control, of the licensed supervising psychologist when providing psychological services.

(7-1-93)

ii. Work assignments shall be commensurate with the skills of the Psychologist Under Supervision and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)

iii. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the supervising licensed psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then public announcement of fees and services with lay or professional public may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the licensed supervising psychologist are made clear to the public. (7-1-93)

iv. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then the setting and collecting of fees may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the supervising psychologist are made clear to the public; and with the exception that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)

v. All persons receiving services from a Psychologist Under Supervision shall sign a written notice indicating their understanding that the service provider is a Psychologist Under Supervision and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)

vi. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category III Psychologist Under Supervision. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD
DOCKET NO. 24-1301-0601 (NEW CHAPTER - FEE RULE)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

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) 54-2206, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules are being allowed as per Title 54, Chapter 22. The proposed rules provide contact information, definitions, defines supervision, provide an application, provide for fees, set standards for continuing education, defines disciplinary penalties, and provides a code of ethics.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Title 54, Chapter 22 was amended and signed into law in 2006 bringing this board under the Bureau. These rules are being promulgated per Idaho Code. These temporary proposed rules set fees allowed in Title 54, Chapter 22.

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;

These temporary/proposed rules would set fees allowed in Section 54-2207, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being done to comply with Title 54, Chapter 51.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 24th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220, Boise, ID 83702
(208) 334-3233 / (208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1301-0601

IDAPA 24
TITLE 13
CHAPTER 01

24.13.01 - RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD

000. LEGAL AUTHORITY (RULE 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Physical Therapy Licensure Board by the provisions of Section 54-2206, Idaho Code. (7-1-06)T

001. TITLE AND SCOPE (RULE 1).

The rules shall be cited as IDAPA 24.13.01, "Rules Governing The Physical Therapy Licensure Board." (7-1-06)T

002. WRITTEN INTERPRETATIONS (RULE 2).

The board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-1-06)T

003. ADMINISTRATIVE APPEAL (RULE 3).

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-06)T

004. INCORPORATION BY REFERENCE (RULE 4).

There are no documents incorporated by reference into this rule. (7-1-06)T

005. ADDRESS OF THE PHYSICAL THERAPY LICENSURE BOARD (RULE 5).

The office of the Physical Therapy Licensure Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is pht@ibol.idaho.gov. The Board's official web site is at www.ibol.idaho.gov/pht.htm. (7-1-06)T

006. PUBLIC RECORD ACT COMPLIANCE (RULE 6).

The records associated with The Physical Therapy Licensure Board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. The Physical Therapy Licensure Board. (7-1-06)T

02. Bureau. Bureau means the Idaho Bureau of Occupational Licenses as created in section 67-2602, Idaho Code. (7-1-06)T

03. Physical Therapist. An individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (7-1-06)T

04. Physical Therapist Assistant. An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (7-1-06)T

05. Supportive Personnel. An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (7-1-06)T

06. Non-Treatment Patient Related Tasks. Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (7-1-06)T

07. Routine Physical Therapy Tasks. Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (7-1-06)T

08. Testing. (7-1-06)T

a. Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (7-1-06)T

- i. Electrodiagnostic and electrophysiological measurements; (7-1-06)T
- ii. Assessment or evaluation of muscle strength, force, endurance and tone; (7-1-06)T
- iii. Reflexes; (7-1-06)T
- iv. Automatic reactions; (7-1-06)T
- v. Posture and body mechanics; (7-1-06)T
- vi. Movement skill and accuracy; (7-1-06)T
- vii. Joint range of motion and stability; (7-1-06)T
- viii. Sensation; (7-1-06)T
- ix. Perception; (7-1-06)T
- x. Peripheral nerve function integrity; (7-1-06)T
- xi. Locomotor skills; (7-1-06)T
- xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (7-1-06)T
- xiii. Limb volume, symmetry, length and circumference; (7-1-06)T
- xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (7-1-06)T
- xv. Vital signs such as pulse, respiratory rate, and blood pressure; (7-1-06)T
- xvi. Activities of daily living; and the physical environment of the home and work place; and (7-1-06)T
- xvii. Pain patterns, localization and modifying factors; and (7-1-06)T

- xviii. Photosensitivity. (7-1-06)T
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (7-1-06)T
- 09. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (7-1-06)T
- 10. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (7-1-06)T
- a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (7-1-06)T
- b.** Inducing relaxation; (7-1-06)T
- c.** Improving contractile and non-contractile tissue extensibility; and (7-1-06)T
- d.** Improving pulmonary function. (7-1-06)T
- 11. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (7-1-06)T
- 12. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (7-1-06)T
- 13. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (7-1-06)T
- 14. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (7-1-06)T
- 15. Supervising Physical Therapist.** A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (7-1-06)T
- 16. Nationally Accredited School.** A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (7-1-06)T
- a.** The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (7-1-06)T
- b.** The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (7-1-06)T
- c.** An Accrediting agency recognized by the U.S. Commissioner of Education, the Council on Postsecondary Accreditation, or both. (7-1-06)T
- 011. -- 015. (RESERVED).**

016. SUPERVISION (RULE 16).

A physical therapist shall supervise and be responsible for patient care given by physical therapist assistants, supportive personnel, physical therapy students, and physical therapist assistant students. (7-1-06)T

01. Procedures and Interventions Performed Exclusively by Physical Therapist. The following procedures and interventions shall be performed exclusively by a physical therapist: (7-1-06)T

a. Interpretation of a referral for physical therapy if a referral has been received. (7-1-06)T

b. Performance of the initial patient evaluation and problem identification including a diagnosis for physical therapy and a prognosis for physical therapy. (7-1-06)T

c. Development or modification of a treatment plan of care which is based on the initial evaluation and which includes long-term and short-term physical therapy treatment goals. (7-1-06)T

d. Assessment of the competence of physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel to perform assigned procedures, interventions and routine tasks. (7-1-06)T

e. Selection and delegation of appropriate portions of treatment procedures, interventions and routine physical therapy tasks to the physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel. (7-1-06)T

f. Performance of a re-evaluation when any change in a patient's condition occurs that is not consistent with the physical therapy treatment plan of care, patient's anticipated progress, and physical therapy treatment goals. (7-1-06)T

g. Performance and documentation of a discharge evaluation and summary of the physical therapy treatment plan. (7-1-06)T

02. Supervision of Physical Therapist Assistants. A physical therapist assistant shall be supervised by a physical therapist by no less standard than general supervision. (7-1-06)T

a. A physical therapist assistant shall not change a procedure or intervention unless such change of procedure or intervention has been included within the treatment plan of care as set forth by a physical therapist. (7-1-06)T

b. A physical therapist assistant may not continue to provide treatment as specified under a treatment plan of care if a patient's condition changes such that further treatment necessitates a change in the established treatment plan of care unless the physical therapist assistant has consulted with the supervising physical therapist prior to the patient's next appointment for physical therapy, and a re-evaluation is completed by the supervising physical therapist. (7-1-06)T

c. A patient re-evaluation must be performed and documented by the supervising physical therapist a minimum of every five (5) visits or once a week if treatment is performed more than once per day. (7-1-06)T

d. A physical therapist assistant may refuse to perform any procedure, intervention, or task delegated by a physical therapist when such procedure, intervention, or task is beyond the physical therapist assistant's skill level or scope of practice standards. (7-1-06)T

e. A physical therapist shall not be required to co-sign any treatment related documents prepared by a physical therapist assistant, unless required to do so in accordance with law, or by a third-party. (7-1-06)T

03. Supervision of Supportive Personnel. Any routine physical therapy tasks performed by supportive personnel shall require direct personal supervision. (7-1-06)T

04. Supervision of Physical Therapy and Physical Therapist Assistant Students. Supervision of

physical therapy students and physical therapist assistant students shall require direct supervision. (7-1-06)T

a. A physical therapy student shall only be supervised by the direct supervision of a physical therapist. (7-1-06)T

b. A physical therapy student shall be required to sign all treatment notes with the designation "SPT" after their name, and all such signatures shall require the co-signature of the supervising physical therapist. (7-1-06)T

c. A physical therapist assistant student shall be required to sign all treatment notes with the designation "SPTA" after their name, and all such signatures shall require the co-signature of the supervising physical therapist or supervising physical therapist assistant. (7-1-06)T

05. Supervision Ratios. (7-1-06)T

a. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants providing such treatment be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (7-1-06)T

b. At no time during the treatment of a patient or patients for physical therapy shall the number of supportive personnel performing routine physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (7-1-06)T

c. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapy students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (7-1-06)T

d. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistant students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (7-1-06)T

e. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants, physical therapy students, physical therapist assistants students, and supportive personnel, or a combination thereof, performing delegated supervised physical therapy or routine physical therapy tasks be more than three (3) times in number of such physical therapist(s) providing physical therapy treatment at any physical therapy practice or site; nor shall the number of physical therapist assistant students or supportive personnel, or a combination thereof, performing delegated and supervised physical therapy tasks or routine physical therapy tasks be more than twice in number of such physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (7-1-06)T

017. -- 099. (RESERVED).

100. MEETINGS AND ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet at least once annually at such time and place as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the Chairman or any two (2) members, and all members shall be notified in writing. (7-1-06)T

02. Voting. A quorum shall be three (3) Board members. A majority vote of Board members present shall be considered the action of the Board as a whole. Any motion before the Board shall fail on a tie vote. (7-1-06)T

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant shall submit a completed written application on forms provided by the Board together with applicable

fees. The application shall be verified under oath and shall require the following information: (7-1-06)T

- 01. Education.** The educational background of the applicant; (7-1-06)T
- 02. Evidence of Graduation.** Evidence of graduation from a nationally accredited school; (7-1-06)T
- 03. Criminal Convictions.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (7-1-06)T
- 04. Disciplinary Action.** The disclosure of any disciplinary action against the applicant by any professional regulatory agency; (7-1-06)T
- 05. License or Registration Denial.** The disclosure of the denial of registration or licensure by any state or district regulatory body; (7-1-06)T
- 06. References.** Two (2) references from individuals, other than relatives or individuals living with the applicant, who have at least two (2) years of personal knowledge of the applicant's character and ability to provide physical therapy; (7-1-06)T
- 07. Photograph.** An un-mounted passport type photograph of the applicant, taken not more than one (1) year prior to the date of application; and (7-1-06)T
- 08. Other Information.** Such other information as the Board deems necessary to identify and evaluate the applicant's credentials. (7-1-06)T
- 09. Incomplete applications.** The Board shall not review incomplete applications and shall not approve licensure for applicants who have failed to provide adequate proof of having met the licensure requirements. (7-1-06)T

151. -- 199. (RESERVED).

200. FEES (RULE 200).

- 01. License Fee.** (7-1-06)T
 - a.** The fee for the initial licensure and the annual renewal of a physical therapist shall be sixty-five dollars (\$65). (7-1-06)T
 - b.** The fee for the initial licensure and the annual renewal of a physical therapist assistant shall be forty-five dollars (\$45). (7-1-06)T
- 02. Examination Fee.** The fee for examination shall be that set by the examination entity approved by the Board and shall include an additional administrative fee of forty dollars (\$40). (7-1-06)T
- 03. Reinstatement Fee.** A reinstatement fee shall be thirty-five dollars (\$35) and satisfactory proof of successful completion of the continuing education requirement. (7-1-06)T
- 04. Application Fee.** The application fee shall be fifty dollars (\$50) and shall accompany all applications. Fees shall not be refundable. (7-1-06)T
- 05. Extraordinary Expenses.** In those situations where the processing of an application requires extraordinary expenses, the Board may charge the applicant reasonable fees to cover all or part of the extraordinary expenses. (7-1-06)T

201. -- 249. (RESERVED).

250. CONTINUING EDUCATION REQUIREMENT (RULE 250).

On and after January 1, 2008, every person holding a license issued by the Board must annually complete sixteen (16) contact hours of continuing education prior to license renewal. (7-1-06)T

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the board. (7-1-06)T

02. Documentation of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided to the board upon request by the board or its agent. (7-1-06)T

03. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. Hours in excess of the required hours may be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (7-1-06)T

04. Compliance Audit. The board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the board of meeting the continuing education requirement be submitted to the bureau. Failure to provide proof of meeting the continuing education upon request of the board shall be grounds for disciplinary action. (7-1-06)T

05. Special Exemption. The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the board. (7-1-06)T

06. Continuing Education Credit Hours. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity approved by the Board. (7-1-06)T

a. General Criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit: (7-1-06)T

i. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee; (7-1-06)T

ii. Pertains to subject matters integrally related and germane to the practice of the profession; (7-1-06)T

iii. Conducted by individuals who have specialized education, training and experience to be considered qualified to present the subject matter of the program. The Board may request documentation of the qualifications of presenters; (7-1-06)T

iv. Application for Board approval is accompanied by a paper, manual or outline which describes the specific offering and includes the program schedule, goals and objectives; and (7-1-06)T

v. Provides proof of attendance to licensees in attendance including: Date, location, course title, presenter(s); Number of program contact hours (One (1) contact hour equals one (1) hour of continuing education credit.); and the official signature or verification of the program sponsor. (7-1-06)T

b. Specific Criteria. Continuing education hours of credit may be obtained by: (7-1-06)T

i. Presenting professional programs which meet the criteria listed in these rules. Two (2) hours of credit will be awarded for each hour of presentation by the licensee. A course schedule or brochure must be maintained for audit; (7-1-06)T

ii. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy in order to receive the following continuing education credits: (7-1-06)T

- (1) One (1) academic semester hour = fifteen (15) continuing education hours of credit; (7-1-06)T
- (2) One (1) academic trimester hour = twelve (12) continuing education hours of credit; (7-1-06)T
- (3) One (1) academic quarter hour = ten (10) continuing education hours of credit. (7-1-06)T
- iii. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee; (7-1-06)T
- iv. Authoring research or other activities which are published in a recognized professional publication. The licensee shall receive five (5) hours of credit per page; (7-1-06)T
- v. Viewing videotaped presentations if the following criteria are met: (7-1-06)T
 - (1) There is a sponsoring group or agency; (7-1-06)T
 - (2) There is a facilitator or program official present; (7-1-06)T
 - (3) The program official may not be the only attendee; and (7-1-06)T
 - (4) The program meets all the criteria specified in these rules; (7-1-06)T
- vi. Participating in home study courses that have a certificate of completion; (7-1-06)T
- vii. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics; (7-1-06)T
- viii. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics; and (7-1-06)T
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics. (7-1-06)T

07. Submitting False Reports or Failure to Comply. The Board may condition, limit, suspend, or refuse to renew the license of any individual whom the Board determines submitted a false report of continuing education or failed to comply with the continuing education requirements. (7-1-06)T

08. Failure to Receive the Renewal Application. Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal application and renewal fee. (7-1-06)T

251. -- 274. (RESERVED).

275. DISCIPLINARY PENALTY (RULE 275).

01. Disciplinary Procedures. The disciplinary procedures of the Bureau are the disciplinary procedures of the Board. (7-1-06)T

02. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation upon anyone licensed under Title 54, Chapter 22, Idaho Code who is found by the Board to be in violation of Section 54-2219, Idaho Code. (7-1-06)T

03. Costs and Fees. The Board may order anyone licensed under Title 54, Chapter 22, Idaho Code, who is found by the Board to be in violation of the provisions of Title 54, Chapter 22, Idaho Code, to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee. (7-1-06)T

276. -- 299. (RESERVED).

300. CODE OF ETHICS (RULE 300).

Physical therapists and physical therapist assistants are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A and Appendix B to these rules. (7-1-06)T

301. -- 999. (RESERVED).

APPENDIX A - PHYSICAL THERAPIST CODE OF ETHICS

Preamble

This Code of Ethics of the American Physical Therapy Association sets forth principles for the ethical practice of physical therapy. All physical therapists are responsible for maintaining and promoting ethical practice. To this end, the physical therapist shall act in the best interest of the patient/client. This Code of Ethics shall be binding on all physical therapists.

Principle 1

A physical therapist shall respect the rights and dignity of all individuals and shall provide compassionate care.

Principle 2

A physical therapist shall act in a trustworthy manner toward patients/clients and in all other aspects of physical therapy practice.

Principle 3

A physical therapist shall comply with laws and regulations governing physical therapy and shall strive to effect changes that benefit patients/clients.

Principle 4

A physical therapist shall exercise sound professional judgment.

Principle 5

A physical therapist shall achieve and maintain professional competence.

Principle 6

A physical therapist shall maintain and promote high standards for physical therapy practice, education, and research.

Principle 7

A physical therapist shall seek only such remuneration as is deserved and reasonable for physical therapy services.

Principle 8

A physical therapist shall provide and make available accurate and relevant information to patients/clients about their care and to the public about physical therapy services.

Principle 9

A physical therapist shall protect the public and the profession from unethical, incompetent, and illegal acts.

Principle 10

A physical therapist shall endeavor to address the health needs of society.

Principle 11

A physical therapist shall respect the rights, knowledge, and skills of colleagues and other health care professionals.

APPENDIX B - PHYSICAL THERAPIST ASSISTANT CODE OF ETHICS

Preamble

This document of the American Physical Therapy Association sets forth standards for the ethical conduct of the physical therapist assistant. All physical therapist assistants are responsible for maintaining high standards of conduct while assisting physical therapists. The physical therapist assistant shall act in the best interest of the patient/client. These standards of conduct shall be binding on all physical therapist assistants.

Standard 1

A physical therapist assistant shall respect the rights and dignity of all individuals and shall provide compassionate care.

Standard 2

A physical therapist assistant shall act in a trustworthy manner toward patients/clients.

Standard 3

A physical therapist assistant shall provide selected physical therapy interventions only under the supervision and direction of a physical therapist.

Standard 4

A physical therapy assistant shall comply with laws and regulations governing physical therapy.

Standard 5

A physical therapist assistant shall achieve and maintain competence in the provision of selected physical therapy interventions.

Standard 6

A physical therapist assistant shall make judgments that are commensurate with his or her educational and legal qualifications as a physical therapist assistant.

Standard 7

A physical therapist assistant shall protect the public and the profession from unethical, incompetent, and illegal acts.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0601

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) 54-3204, 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 18, 2006.

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:

To clarify required credentials to be filed, allow for termination of inactive files after twenty-four (24) months of no contact, and delete sections pertaining to Clinical Practice Exemption and Independent Practice as deadline is past.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0601

011. -- ~~099~~74. (RESERVED).

075. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 075).

01. Completed Application. An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Social Work Examiners. ()

02. Official Documents. All applicants shall arrange for official documents including transcripts to be transmitted by the registrars of the educational institutions or official custodian of documents, directly to the board. ()

03. Applications on File. Applications on file with the Board for a period in excess of two (2) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. ()

076. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

201. PRACTICE OF SOCIAL WORK.

01. Baccalaureate Social Work. The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. (3-20-04)

02. Master's Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

~~**04. Clinical Practice Exemption.** A social worker licensed in Idaho at the masters level prior to August 5, 2002 engaged in clinical social work and employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to July 1, 2006 showing a minimum of one hundred (100) face-to-face hours of employer provided supervision.~~

~~No more than seventy five (75) hours of supervision may be provided by a licensed counselor, marriage and family therapist, or psychiatric nurse and no less than twenty five (25) hours of supervision may be provided by a licensed clinical social worker, psychologist, or an individual licensed to practice medicine and surgery who practices in the area of psychiatry. A licensed social worker who meets the requirements of Section 201 may continue to practice clinical social work until July 1, 2006. An individual practicing under this exemption must still pass the clinical examination as set forth in Section 350 prior to clinical licensure.~~ (3-14-05)

~~**05. Independent Practice of Social Work.** As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for that practice. No baccalaureate or masters level social worker shall engage in independent practice until such time as the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000) hours in a supervised setting in no less than two (2) years. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to July 1, 2006, submit documentation establishing that a minimum of three thousand (3,000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained in a supervised setting and provided by a qualified and experienced professional working in the same area of practice; that supervision occurred on a regular and on-going basis; and that the supervisor(s) held a social work license in good standing.~~ (3-14-05)

064. Private Practice of Social Work. As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

~~**075. Employment of a Social Worker.** A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner.~~ (5-3-03)

086. Supervision. Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit). Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.08.c. (4-11-06)

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

c. Supervision of social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor or a licensed marriage and family therapist registered as a supervisor and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. A social worker pursuing licensure at the clinical level must document one thousand seven hundred fifty (1,750) hours

of direct client contact of the required three thousand (3,000) hours in clinical social work as defined. (3-14-05)

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)

097. Supervised Practice Required. To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.08; (3-20-04)

b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

c. Not have more than two (2) supervisors at any given time. (5-3-03)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0601

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) 54-3404, 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 18, 2006.

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:

Update incorporation by reference pertaining to ethics, revise counselor supervisor requirements, clarify qualifications for clinical professional counselors, clarify supervision for marriage and family therapists, and add national credential registry for endorsement qualifications.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-0601

004. INCORPORATION BY REFERENCE (RULE 4).

01. ACA Code of Ethics. “ACA Code of Ethics and Standards of Practice,” as published by the American Counseling Association (ACA), effective ~~1995~~ 2005 and referenced in Subsections 241.02, 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-30-06)(____)

02. AAMFT Code of Ethics. The document titled “AAMFT Code of Ethics”, as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-30-06)

03. ACES Guidelines. The document titled “ACES” that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-2-03)

04. Guidelines. The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2002 referenced in Subsection 240.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a counselor. (4-2-03)

01. Requirements for Registration. (4-2-03)

a. Document at least two (2) years experience as a licensed counselor ~~in Idaho.~~ (4-2-03)(____)

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (4-2-03)

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. (4-2-03)

b. A supervisor’s registration shall be valid only so long as the individual’s counselor license remains current and in good standing. (4-2-03)

03. Supervision. (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines

for supervisors dated March 1993, adopted by the Association for Counselor Education and Supervision. (4-2-03)

- b. A Registered Counselor Supervisor shall not provide supervision to more than six (6) individuals. (3-30-06)

201. -- 224. (RESERVED).

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).

Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully completed the required examination and the following: (3-30-06)

- 01. Requirements.** The following requirements must be met: (3-13-02)

- a. Hold a valid licensed professional counselor license; and (4-2-03)

- b. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (4-2-03)

- i. All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor. The remainder of the supervision may be provided by licensed Psychiatrists, Counseling/Clinical Psychologists, Licensed Clinical Social Workers registered with the Board of Social Work Examiners, or Marriage and Family Therapists registered with the Board. (~~4-6-05~~)(____)

- ii. The ratio for supervision will consist of one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. (7-1-97)

- iii. No more than one-half (1/2) of group supervision shall be allowed. (____)

- c. Successful completion of the required written examination. (3-30-06)

- d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

- 02. Supervisors.** A supervisor may supervise no more than six (6) licensed professional counselors. (3-30-06)

226. -- 237. (RESERVED).

238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

- 01. Graduate Degree.** Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

- 02. Practicum.** Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

- 03. Supervised Marriage and Family Therapy Experience.** Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Marriage and Family Therapist must be registered with the Board to provide post graduate supervision. (4-2-03)

- a. A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

- i. A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)

- ii. Two hundred (200) hours of supervision. (3-13-02)
- b.** Supervision must be obtained from a registered marriage and family therapist supervisor or a licensed clinical professional counselor registered with the Board, licensed psychologist, licensed clinical social worker registered with the Board of Social Work Examiners, or licensed psychiatrist who documents:
(~~3-20-04~~)()
- i. A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)
- ii. Fifteen (15) contact hours of education in supervisor training; and (3-20-04)
- iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)
- c.** No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as no more than six (6) supervisees per each supervisor; and (3-13-02)
- d.** Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)
- e.** Supervision must employ the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-13-02)
- f.** In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)
- g.** The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)
- 04. Examination.** (3-13-02)
- a.** The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)
- b.** The examination will be conducted at a time and place specified by the Board. (3-13-02)
- c.** Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. ENDORSEMENT (RULE 300).

The Board may grant a license to any person who submits a completed application on a form approved by the board together with the required fees and who: (3-13-02)

- 01. Holds a Current License.** The applicant must be the holder of a current active license, in the profession for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the board from the issuing agency; and (3-13-02)
- 02. Has Not Been Disciplined.** The applicant must certify they have not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (3-13-02)
- 03. Is of Good Moral Character.** The applicant must certify they are of good moral character and

have not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (3-13-02)

04. Has Documented Experience. The applicant must provide a documented record of at least five (5) years actual practice under licensure immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the five (5) year period as determined by the board; and (3-13-02)

05. Will Abide by Laws, Rules and Code of Ethics. The applicant must certify under oath to abide by the laws and rules governing the practice of counseling and marriage and family therapy in Idaho and the applicable code of ethics as adopted; and either (3-13-02)()

06. National Credential Registry. If applicant has been granted credentials by the American Association of State Counseling Boards as qualifying for Category II of the national credential registry or any such similar qualification granted by a national credentialing entity otherwise approved by the Board; or ()

067. Provides Information. The applicant must document at least three (3) of the following during the five (5) years immediately prior to application: (3-13-02)

- a.** A minimum of one thousand (1,000) hours client contact; (3-13-02)
- b.** Service as an officer of a state or national counseling or marriage and family therapy organization, or a member of a state or national counseling or marriage and family therapy board or committee, or other leadership positions as may be approved by the board; (3-13-02)
- c.** Teaching at least three (3) graduate courses for credit at an accredited college or university; (3-13-02)
- d.** A certificate to supervise issued by the NBCC or AAMFT; (3-13-02)
- e.** Providing at least twelve (12) months of supervision to each of no less than three (3) persons seeking licensure; (3-13-02)
- f.** Maintained professional liability insurance for the previous five (5) years with proof of no claims filed; (3-13-02)
- g.** Obtained a post graduate degree in a field of study related to counseling or marriage and family therapy that is in addition to the minimum licensure requirements; (3-13-02)
- h.** Current certification by a national credentialing entity as approved by the board in the discipline for which licensure is sought; (3-13-02)
- i.** Twenty (20) hours of continuing education per year for the five (5) years immediately prior to application. (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.17.01 - RULES OF THE IDAHO STATE BOARD OF ACUPUNCTURE
DOCKET NO. 24-1701-0601
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) 54-4705, 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 18, 2006.

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:

Update contact information for the Board and to reduce the original license fee and the annual renewal fee from \$250 to \$200 per license.

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

There is no impact on general funds. This change would reduce the cash balance in dedicated funds for the Board by a total of approximately \$7,050 per year. The original license fee and renewal fee are authorized pursuant to Section 54-4710, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1701-0601

005. ADDRESS OF THE IDAHO STATE BOARD OF ACUPUNCTURE (RULE 5).

The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~acu@ibol.state.id.us~~ acu@ibol.idaho.gov. The Board's official web site is at ~~http://www.ibol.idaho.gov/acu.htm~~ www.ibol.idaho.gov/acu.htm. (4-6-05)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (RULE 300).

- 01. Application Fee.** Application fee for any original license or certification – two hundred ~~fifty~~ dollars (\$~~250~~0). (~~3-30-01~~)(_____)
- 02. Original License Fee.** (3-30-01)
- a.** Original license fee - two hundred ~~fifty~~ dollars (\$~~250~~0). (~~3-30-01~~)(_____)
- b.** Original fee for Certification - two hundred ~~fifty~~ dollars (\$~~250~~0). (~~3-30-01~~)(_____)
- c.** Original fee for Technician Certification - one hundred fifty dollars (\$150). (3-30-01)
- 03. Annual Renewal Fee.** (3-10-00)
- a.** Annual renewal fee for Licensure – two hundred ~~fifty~~ dollars (\$~~250~~0). (~~3-30-01~~)(_____)
- b.** Annual renewal fee for Certification – two hundred ~~fifty~~ dollars (\$~~250~~0). (~~3-30-01~~)(_____)
- c.** Annual renewal fee for Technician Certification – one hundred fifty dollars (\$150). (3-10-00)
- 04. Inactive License.** Inactive license or certification fee – fifty dollars (\$50). (3-30-01)
- 05. Non-refundable.** All fees are non-refundable. (3-10-00)
- 06. Yearly Fees.** With the exception of Subsection 300.01 and 300.02 all fees provided under these rules are yearly fees. (3-10-00)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0601

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) 54-4106, 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 18, 2006.

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:

Update contact information, clarify education required to include courses approved by AQB, education effective dates are being changed from January 1, 2007 to January 1, 2008 for Licensed Residential Appraiser, Certified Residential Appraiser, and Certified General Appraiser; allow credit for time spent attending board meetings to be used toward continuing education requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1801-0601

005. ADDRESS OF THE IDAHO REAL ESTATE APPRAISER BOARD (RULE 5).

The office of the Real Estate Appraiser Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is rea@ibol.idaho.gov. The Board's official web site address is <https://www.ibol.idaho.gov/rea.htm>. ~~(4-11-06)~~(_____)

(BREAK IN CONTINUITY OF SECTIONS)

299. REQUIREMENTS FOR LICENSURE/CERTIFICATION (RULE 299).

All applicants for licensure/certification in any real estate appraiser classification must meet the following requirements in addition to those requirements set forth in Sections 300, 350, and 400 below. All applicants for trainee registration must meet the following requirements regarding education set forth in Section 299 in addition to those requirements set forth in Section 430. (3-13-02)

01. Examination. Successful completion of an examination approved by the Board pursuant to the guidelines of the Appraisal Foundation. (7-1-97)

02. Education. (7-1-97)

a. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes an examination pertinent to the educational offering. (7-1-97)

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. Courses approved by the Appraisal Qualifications Board. ~~(8-20-04)~~(_____)

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits which are obtained from the course provider by challenge examination without attending the course will not be accepted. (3-18-99)

e. Various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of all topics listed below. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. (7-1-97)

i. Influences on Real Estate Value. (7-1-97)

ii. Legal Considerations in Appraisal. (7-1-97)

iii. Types of Value. (7-1-97)

iv. Economic Principles. (7-1-97)

- v. Real Estate Markets and Analysis. (7-1-97)
 - vi. Valuation Process. (7-1-97)
 - vii. Property Description. (7-1-97)
 - viii. Highest and Best Use Analysis. (7-1-97)
 - ix. Appraisal Statistical Concepts. (7-1-97)
 - x. Sales Comparison Approach. (7-1-97)
 - xi. Site Value. (7-1-97)
 - xii. Cost Approach. (7-1-97)
 - xiii. Income Approach. (7-1-97)
 - xiv. Valuation of Partial Interests. (7-1-97)
 - xv. Appraisal Standards and Ethics. (7-1-97)
 - f. Advanced courses will be those courses for which an introductory or basic course is required. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. (7-1-97)
- 03. Experience.** (7-1-97)
- a. The work product claimed for experience credit must be in conformity with the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared. (3-13-02)
 - b. On or after July 1, 2003, appraisal experience must be obtained as a registered trainee or as a licensed or certified appraiser. A year of experience is equal to a minimum of one thousand (1,000) hours worked during a consecutive twelve (12) month period. Regardless of the number of experience hours submitted or obtained during any twelve (12) month period, no more than one thousand (1,000) of those hours may be credited to meet this requirement. Hours obtained in excess of one thousand (1,000) hours during any consecutive twelve (12) month period may not be credited or carried over into the next twelve (12) month period. (3-13-02)
 - c. Only experience gained during the five (5) years preceding application will be considered for evaluation. (7-1-97)
 - d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, tax appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (3-18-99)
 - e. An appraiser applying for certification/licensure must verify his completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (7-1-97)
 - i. To demonstrate experience the Board requires submission of a log which details hours claimed for experience credit. (7-1-97)
 - ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)

iii. The Board may request submission of written reports or file memoranda which substantiate an applicant's claim for experience credit. (7-1-97)

f. Ad valorem tax appraisers who demonstrate that they use techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.10, Field Real Estate Appraisal Experience will receive experience credit. (7-1-97)

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. Prior to January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than seventy (70) classroom hours of study related to those topics outlined under Subsection 250.01.e., the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics will be credited to the classroom hour requirement. Beginning on January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: (~~4-11-06~~)()

a. Document registration as an Appraiser Trainee; and (4-11-06)

b. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Residential Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and (4-11-06)

ii. Residential Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and (4-11-06)

iii. Residential Sales Comparison and Income Approaches - not less than thirty (30) hours specifically including Valuation Principles and Procedures - Sales Comparison Approach; Valuation Principles and Procedures - Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and (4-11-06)

iv. Residential Report Writing and Case Studies - not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. (4-11-06)

02. Experience. Prerequisite to sit for the examination: (7-1-97)

a. Document two thousand (2,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

03. Examination. Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

301. -- 349. (RESERVED).

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being certified every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. Prior to January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred twenty (120) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related to those topics outlined under Subsection 250.01.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; will be credited to the classroom hour requirement. Beginning on January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall: ~~(4-11-06)~~(____)

a. Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law; and (4-11-06)

b. Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (4-11-06)

c. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)

ii. Advanced Residential Applications and Case Studies - not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (4-11-06)

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (4-11-06)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

351. -- 399. (RESERVED).

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being certified, an individual must meet the continuing education requirement.

(7-1-97)

01. Education. Prior to January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho State Certified General Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection 250.01.e. Beginning on January 1, 2007~~8~~, as a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall:

(4-11-06)(____)

a. Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ageconomics, business management, or real estate; and

(4-11-06)

b. Document registration as an Appraiser Trainee or licensure as a Licensed Residential Real Estate Appraiser or licensure as a Certified Residential Real Estate Appraiser; and

(4-11-06)

c. Document the successful completion of not less than two hundred ten (210) classroom hours of courses in subjects related to real estate appraisal as follows:

(4-11-06)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and

(4-11-06)

ii. General Appraiser Market Analysis and Highest and Best Use - not less than thirty (30) hours; and

(4-11-06)

iii. General Appraiser Sales Comparison Approach - not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and

(4-11-06)

iv. General Appraiser Site Valuation and Cost Approach - not less than thirty (30) hours; and

(4-11-06)

v. General Appraiser Income Approach - not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and

(4-11-06)

vi. General; Appraiser Report Writing and Case Studies - not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies.

(4-11-06)

02. Experience. Experience is a prerequisite to sit for the licensure examination:

(4-11-06)

a. Document three thousand (3,000) hours of appraisal experience in no less than thirty (30) months (See Subsection 250.02.). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.

(4-11-06)

b. One thousand five hundred (1,500) hours of the experience must be nonresidential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 250.02.d. (4-11-06)

401. CONTINUING EDUCATION (RULE 401).

All certified/licensed appraisers must comply with the following continuing education requirements: (7-1-97)

01. Purpose of Continuing Education. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising. (7-1-97)

02. Hours Required. The equivalent of fifteen (15) classroom hours of instruction in courses or seminars during each year prior to renewal is required. (3-20-04)

a. A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment. (7-1-93)

b. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. (7-1-97)

c. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the Appraisal Qualification Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years. (4-6-05)

d. Once every two (2) years an Idaho State Certified/Licensed Real Estate Appraiser will be required to attend an approved seven (7) hour USPAP update course or the equivalent. ~~An approved fifteen (15) hour USPAP course shall be considered as an equivalent course, however, no excess hours may be carried forward to meet the two (2) year update requirement.~~ (4-6-05)(____)

03. Credit for Appraisal Educational Processes and Programs. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. (7-1-97)

04. Credit for Attending the Licensure Board Meetings. Continuing education credit may be granted once each year for time spent attending Board meetings of no less than two (2) hours. (____)

045. Requirement When a Certificate/License Is Cancelled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be ~~obtained prior to reinstatement. In addition, for each two (2) years (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed,~~ documented, including a seven (7) hour USPAP update course, ~~must be obtained~~ prior to reinstatement. (3-20-04)(____)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0601 (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 Section(s) 54-4205, 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 18, 2006.

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 a scope of practice and increase fees for license application and provisional/temporary permits.

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

The fees for application and provisional/temporary permits as established by Section 54-4205 are being increased from \$50 to \$100.

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

There is no impact on general funds. This change could have a positive impact of \$20,050 on dedicated funds for the Board.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0601

402. -- ~~494~~. (RESERVED).

450. SCOPE OF PRACTICE (RULE 450).

A residential care facility administrator shall possess the education, training, and experience necessary to insure that appropriate services and care are provided for each facility resident within any facility under the licensee's administration. Information contained within the application together with supporting documentation maintained by the licensee shall be prima facie evidence of the licensee's education and experience. It is the responsibility of the individual licensee to maintain adequate documentation of education and experience appropriate to the planning, organizing, directing and control of the operation of a residential care facility. ()

451. -- 499. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

600. FEES (RULE 600).

- 01. **License Application Fee.** License application -- ~~fifty~~ one hundred dollars (~~\$50~~100). ~~(4-2-03)~~()
- 02. **Annual Renewal Fee.** Annual renewal fee -- one hundred dollars (\$100). (3-30-06)
- 03. **Provisional/Temporary.** Provisional/temporary -- ~~forty~~ one hundred dollars (~~\$40~~100). ~~(7-1-93)~~()
- 04. **Reinstatement Fee.** Reinstatement -- twenty-five dollars (\$25). (7-1-93)
- 05. **Reissuance of Lost License Fee.** Reissuance of lost license -- ten dollars (\$10). (7-1-93)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0601

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for vacating this rulemaking:

The temporary rule, which underlies the vacated rulemaking, is for a pilot project that has just recently been put into operation. The Board of Pharmacy anticipates that there may well be a need for some additional modifications to the temporary rule as the pilot project unfolds and the Board and the pilot pharmacy operators gain experience in the day-to-day operations of the pilot project. The Board anticipates using the experience gained to date as well as the operations experiences of the upcoming year as a learning basis for making these changes. The Board believes that the state will be better served with a permanent rule based on this additional experience to be presented to the 2008 Legislature. The Board will seek approval by the 2007 Legislature of the existing temporary rule pursuant to Section 67-5226(3), Idaho Code, to allow the temporary rule to remain in effect until replaced by a permanent rule to be presented to the 2008 Legislature.

The complete text of the temporary rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 74 through 78.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of rulemaking, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

DATED this 23rd day of August, 2006.

R. K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

IDAPA 21 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 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 54-1717 and 37-2715, 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 rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 79 and 80.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

DATED this 23rd day of August, 2006.

R. K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise ID 83720-0067
Phone: (208) 334-2356; Fax: (208) 334-3536

DOCKET NO. 27-0101-0601 - ADOPTION OF PENDING RULE

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 06-8, August 2, 2006, pages 79 and 80.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0603

NOTICE OF RULEMAKING - PROPOSED RULE

EDITOR'S NOTE: Docket No. 27-0101-0602 was mistakenly published twice in the Administrative Bulletin under two (2) different docket numbers. It was originally published correctly in the August 2, 2006 Administrative Bulletin, Volume 06-8, under Docket No. 27-0101-0602. It was inadvertently republished in the September 6, 2006 Administrative Bulletin, Volume 06-9, under Docket No. 27-0101-0603. Docket number 27-0101-0603 is being used for this current 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 37-2702, 37-2715, and 54-1717, 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 18, 2006.

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 rulemaking is necessary to clarify the obligation of licensed pharmacies to submit theft loss information to the Idaho Board of Pharmacy. The pharmacies are already required to submit this information to the DEA and they need only send a copy of the completed DEA form to the Board. This information will assist the Board in protecting the public from the effects of unauthorized use and diversion of controlled substances. The proposed change requires licensed pharmacies to submit the same theft loss information to the Idaho Board of Pharmacy that they now submit to the DEA.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

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 25, 2006.

DATED this 23rd day of August, 2006.

R. K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0603

142. STANDARDS OF CONDUCT.

01. Duty to Cooperate in Investigation. It is the duty of every licensee to cooperate with a disciplinary investigation and any failure or refusal to do so is grounds for disciplinary action. (4-6-05)

02. Duty to Report Theft, Loss, or Adulteration. It is the duty of every pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances and any adulteration of any prescription drug to the Board, even if the theft, loss, or adulteration has been accounted for and the employee disciplined internally. The report of theft or loss required hereunder shall contain all of the information reported to the Drug Enforcement Administration (DEA) as required under 21 CFR 1301.74(c), which information shall be reported to the Board at the same time it is reported to the DEA. (~~4-6-05~~)()

(BREAK IN CONTINUITY OF SECTIONS)

471. THEFT LOSS REPORTS

It is the duty of every Registrant to report any theft or loss of controlled substances to the Board, even if the theft or loss has been accounted for and the employee disciplined internally. The report of the theft or loss required hereunder shall contain all of the information reported to the Drug Enforcement Administration (DEA) as required under 21 CFR 1301.74(c), which information shall be reported to the Board at the same time it is reported to the DEA. ()

~~472.~~ -- 490. (RESERVED).

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-0601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, 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 18, 2006. The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the Commission's address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission's Safety and Accident Reporting Rules currently adopt by reference several national safety codes and federal safety regulations. In particular, Rule 101 currently adopts by reference the 2002 Edition of the National Electrical Safety Code (NESC) published by the Institute of Electrical and Electronics Engineers. The Commission is proposing to amend Rule 101 by adopting the 2007 Edition of the NESC. The major revisions included in the 2007 Edition are: steel pole grounding; moving line sag calculations to Section 23; phasing out the alternative method for calculating load factors and strength factors; requiring the same uniform radial separation (twelve (12) inches) for supply and communication cables from all lines that transport flammable materials; requiring phase-to-phase cover-up when guarding against phase-to-phase contact; and including minimum approach distance tables.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule adopts an updated national safety code necessary for the safety of utility employees and the public during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 25, 2006.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 17th day of August, 2006.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-1101-0601

101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).

The Commission adopts by reference the American National Standards Institute (ANSI) C2-20027 National Electrical Safety Code (NESC), 20027 Edition. The National Electrical Safety Code, 20027 Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. ~~(5-3-03)~~(_____)

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2006.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary and proposed rule. The action is authorized pursuant to Sections 54-2007 and 9-340C, Idaho Code.

PUBLIC HEARING: Public hearing 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 18, 2006.

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 the required finding and concise statement of the supporting reasons for adopting a temporary:

As authorized by Section 9-340C, Idaho Code, this new Rule 305 allows the Commission to establish a mechanism by which a designated broker can access and review the electronically-kept continuing education records of the sales associates currently licensed with that broker. Such records are otherwise exempt from the disclosure requirements of the Public Records Act, Chapter 3, Title 9, Idaho Code.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule change confers a benefit to designated brokers and their sales associates alike, by allowing the broker to quickly easily access his associate's CE record - a record otherwise exempt from the disclosure requirements of the Public Records Act - using a secure "link" provided through IREC's website.

FEE SUMMARY: No fee or charge is involved.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Donna M. Jones, (208) 334-3285.

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 25, 2006.

DATED this 18th day of August, 2006.

Donna M. Jones
Executive Director

Agency: Idaho Real Estate Commission

Physical Address: 633 N. Fourth St., Boise, ID 83702

PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0602

305. DESIGNATED BROKER PERMITTED ACCESS EDUCATION RECORDS OF THE BROKER'S LICENSED SALES ASSOCIATES.

As provided for in Section 9-340C, Idaho Code, the Commission may establish a mechanism to enable a designated broker to access and review the electronically-kept continuing education record of any licensee currently licensed with the broker. Such records are otherwise exempt from the disclosure requirements of the Public Records Act, Chapter 3, Title 9, Idaho Code. Access to records shall be through the means made available by the Commission by motion. (9-1-06)T

305~~6~~. -- 399. (RESERVED).

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0603

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2006.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary and proposed rule. The action is authorized pursuant to Sections 54-2007 and 54-2023(5)(e)(iii), Idaho Code.

PUBLIC HEARING: Public hearing 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 18, 2006.

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 the required finding and concise statement of the supporting reasons for adopting a temporary:

Rule 402, the list of topics approved for continuing education credit, is being expanded to include: Use of technology as to the practice of real estate; Licensee safety; Commercial real estate topics; Tenants in common; Mobile/manufactured homes; Green market; Senior market; Negotiation skills; Communication skills; Resort and recreation; Farm and ranch; Timber and mining; Professionalism; Business Success. Likewise, Rule 404, which lists topics that cannot be approved for credit, is being changed to remove those topics that deal with office or business skills (and thereby permit the Commission to consider such courses for credit).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule change confers a benefit to real estate licensees and education providers by expanding the list of education topics for which the Commission will allow a licensee to receive continuing education credit.

FEE SUMMARY: No fee or charge is involved.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Donna M. Jones, (208) 334-3285.

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 25, 2006.

DATED this 18th day of August, 2006.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285
(208) 334-2050 (fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0603

402. APPROVED TOPICS FOR CONTINUING EDUCATION.

- 01. Topics Approved by the Commission.** Approved topic areas for continuing education, as provided for in Sections 54-2023 and 54-2036, Idaho Code, include the following: (3-20-04)
- a.** Real estate ethics; (3-20-04)
 - b.** Legislative issues that influence real estate practice; (3-20-04)
 - c.** Real estate law; contract law; agency; real estate licensing law and administrative rules; (3-20-04)
 - d.** Fair housing; affirmative marketing; Americans with Disabilities Act; (3-20-04)
 - e.** Real estate financing, including mortgages and other financing techniques; (3-20-04)
 - f.** Real estate market measurement and evaluation; (3-20-04)
 - g.** Land use planning and zoning; land development; construction; energy conservation in building; (3-20-04)
 - h.** Real estate investment; (3-20-04)
 - i.** Accounting and taxation as applied to real property; (3-20-04)
 - j.** Real estate appraising; (3-20-04)
 - k.** Real estate marketing procedures related specifically to actual real estate knowledge; (3-20-04)
 - l.** Real estate inspections; (3-20-04)
 - m.** Property management; (3-20-04)
 - n.** Timeshares, condominiums and cooperatives; (3-20-04)
 - o.** Real estate environmental issues and hazards, including lead-based paint, underground storage tanks, radon, etc., and how they affect the practice of real estate; (3-20-04)
 - p.** Water rights; (3-20-04)
 - q.** Brokerage office management and supervision; *and* ~~(3-20-04)~~(9-1-06)T
 - r.** Use of calculators or computers as applied to the practice of real estate; ~~(3-20-04)~~(9-1-06)T
 - s.** Use of technology as to the practice of real estate; (9-1-06)T
 - t.** Licensee safety; (9-1-06)T
 - u.** Commercial real estate topics; (9-1-06)T
 - v.** Tenants in common; (9-1-06)T

| | | |
|------------|-----------------------------------|-----------|
| w. | <u>Mobile/manufactured homes:</u> | (9-1-06)T |
| x. | <u>Green market:</u> | (9-1-06)T |
| y. | <u>Senior market:</u> | (9-1-06)T |
| z. | <u>Negotiation skills:</u> | (9-1-06)T |
| aa. | <u>Communication skills:</u> | (9-1-06)T |
| bb. | <u>Resort and recreation:</u> | (9-1-06)T |
| cc. | <u>Farm and ranch:</u> | (9-1-06)T |
| dd. | <u>Timber and mining:</u> | (9-1-06)T |
| ee. | <u>Professionalism: and</u> | (9-1-06)T |
| ff. | <u>Business Success.</u> | (9-1-06)T |

02. Other Topics. Upon written request, the Commission may also approve any other topic that directly relates to real estate brokerage practice and that directly contributes to the accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills, and competency necessary to function in the real estate business in a manner that protects and serves the public interest. The knowledge or skills taught in an elective course must enable licensees to better serve real estate consumers. (3-20-04)

03. Topics Not Eligible for Continuing Education Credits. The following activities shall not be eligible for approval for compliance with the continuing education requirement: (3-20-04)

- a.** Those which are specifically exam preparation in nature; (3-20-04)
- b.** ~~Those which deal with office or business skills, such as:~~ (3-20-04)
- ~~i.~~ ~~Typing;~~ (3-20-04)
- ~~ii.~~ ~~Speed reading;~~ (3-20-04)
- ~~iii.~~ ~~Memory improvement;~~ (3-20-04)
- ~~iv.~~ ~~Body language;~~ (3-20-04)
- ~~v.~~ ~~Motivation and similar activities;~~ (3-20-04)
- eb.** Those which are held in conjunction with a brokerage firm's sales promotion or sales meetings; or (3-20-04)
- dc.** Those which are held by trade organizations for licensee's orientation. (3-20-04)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.01 - IDAHO INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-0601
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(s) 63-105 and 63-3039.

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 18, 2006.

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:

Rule 031: Amend Income Tax Rule 031 to include the exception in determining an individual's Idaho residency status for a nonresident alien, since by statute these individuals must be nonresidents. Remove language that is now obsolete. The amendments conform to Idaho Code section 63-3013, as amended in House Bill 457, passed by the 2006 Legislature.

Rule 075: Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2006.

Rule 121: Amend Income Tax Rule 121 to clarify the addback for state and local income and sales taxes when limitations are imposed in computing the federal itemized deduction amount. To avoid major rounding differences, modify the calculation of the addback so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent.

Rule 171: Amend Income Tax Rule 171 to correct the examples for the change in the holding period of real property consistent with 2005 legislative changes in House Bill 165, which changed the holding period for real property from 18 months to 12 months. Add a reference to Income Tax Rule 173 for the determination of the holding period of the interest in income of a pass-through entity.

Rule 173: Amend Income Tax Rule 173 to clarify the time period that an interest in income of a pass-through entity must be met. Include beneficiaries of trusts and estates in the discussion of the gross income limitation. Modify and add examples to better clarify the calculations.

Rule 255: Amend Income Tax Rule 255 to modify the calculation of the proration percentage so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent to avoid major rounding differences.

Rule 280: Amend Income Tax Rule 280 to include language that gives the Tax Commission the authority to require an alternative method for determining Idaho source income of a partnership when the apportionment formula does not fairly represent the extent of the business activity in Idaho. Add language to allow the exclusion of a factor or employment of any other method that fairly represents the extent of business activity in Idaho in such cases.

Rule 290: Amend Income Tax Rule 290 to delete information moved to new Income Tax Rule 291. Amend the rule to reflect the limited information contained in the rule, which is the election available to a qualifying individual to have an entity pay the tax when such individual is an officer, director, shareholder, partner, member, or beneficiary of the entity.

Rule 291: Promulgate new Income Tax Rule 291 to move information from Income Tax Rule 290 that addresses income reportable to Idaho when the income tax is paid by an entity for an officer, director, shareholder, partner, member, or beneficiary. Add information to address deductions that are not allowed in the computation.

Rule 300: Amend Income Tax Rule 300 to clarify that a corporation that is protected by federal Public Law 86-272 is

exempt from the corporate income tax, including the minimum tax.

Rule 700: Amend Income Tax Rule 700 to address taxpayers entitled to the credit, taxes eligible for the credit, and limitations on claiming the credit. Modify the calculation of the credit so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent to avoid major rounding differences.

Rule 701: Promulgate new Income Tax Rule 701 to address the modifications to the other state's adjusted gross income and tax required when computing the credit for taxes paid to another state.

Rule 702: Promulgate new Income Tax Rule 702 to address how a part-year resident determines the credit for taxes paid to another state.

Rule 745: Amend Income Tax Rule 745 with regard to a taxpayer who has multiple activities to be more consistent with the statute that requires the taxpayer to compute qualifying new employees based on the portion of the Idaho business that qualifies as a revenue-producing enterprise.

Rule 747: Amend Income Tax Rule 747 to be consistent with House Bill 28, passed by the 2005 Legislature, which modified the net income limitation to be based on the net income of the taxpayer's trade or business. Income Tax Rule 747 needs to use consistent terms with regard to this limitation. Information regarding taxpayers with multiple activities is no longer relevant and is deleted because the calculation is based on the taxpayer's entire business, not just that portion that relates to a revenue-producing enterprise.

Rule 775: Promulgate new Income Tax Rule 775 to discuss the credit for live organ donation expenses, which was allowed in House Bill 745, passed by the 2006 Legislature. The rule addresses the limitations of the credit and defines live organ donation and live organ donation expenses.

Rule 799: Amend Income Tax Rule 799 to add to the list of priority of credits the new credit for live organ donation expenses allowed by House Bill 745, which was passed by the 2006 Legislature.

Rule 801: Promulgate new Income Tax Rule 801 to discuss persons required to file income tax returns. The rule addresses individuals who make elections under Idaho Code section 63-3022L, corporations included in a unitary group, and taxpayers protected under Public Law 86-272.

Rule 830: Amend Income Tax Rule 830 to allow information returns to be submitted through electronic filing.

Rule 855: Amend Income Tax Rule 855 to clarify that taxpayers whose business activities in Idaho are protected under Public Law 86-272 are not required to pay the permanent building fund tax.

Rule 870: Amend Income Tax Rule 870 to more clearly state that a person who withholds Idaho income tax must have an Idaho withholding account number.

Rule 872: Amend Income Tax Rule 872 to add the provision that an employer who owes less than \$50 monthly or \$600 annually may be allowed to remit tax withheld annually. Clarify that changes to filing cycles take effect on January 1 of the following year.

Rule 874: Amend Income Tax Rule 874 to clarify that Forms W-2 are not required if the employer had no employees and did not pay wages or withhold tax. Specify the due date for filing electronic copies of Forms W-2.

Rule 940: Promulgate new Income Tax Rule 940 to provide definitions for rules relating to the Idaho Small Employer Incentive Act of 2005 as modified by House Bill 754 passed by the 2006 Legislature.

Rule 941: Promulgate new Income Tax Rule 941 to discuss the coordination of the of the Idaho Small Employer Incentive Act of 2005 as modified in 2006 with the Idaho Corporate Headquarters Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing of credits.

Rule 942: Promulgate new Income Tax Rule 942 to discuss the Idaho Small Employer tax incentive criteria as

modified in 2006 legislation and the certification requirements.

Rule 943: Promulgate new Income Tax Rule 943 to discuss the Idaho Small Employer Investment Tax Credit as modified in 2006 legislation.

Rule 944: Promulgate new Income Tax Rule 944 to discuss the Idaho Small Employer Real Property Improvement Tax Credit as modified in 2006 legislation.

Rule 945: Promulgate new Income Tax Rule 945 to discuss the Idaho Small Employer New Jobs Tax Credit as modified in 2006 legislation.

Rule 946: Promulgate new Income Tax Rule 946 to discuss when recapture of the Idaho Small Employer incentives is required. The rule relates to the Idaho Small Employer Incentive Act of 2005 as modified by 2006 legislation.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0601

031. ALIENS (RULE 031).

Sections 63-3013, 63-3013A, and 63-3014, Idaho Code.

(3-20-97)

01. Idaho Residency Status. For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident, except a nonresident alien as defined in Section 7701, Internal Revenue Code, shall be a nonresident. *The individual's residency status for federal income tax purposes does not determine the Idaho residency status of an alien taxpayer.* See Paragraph 031.01.b., of this rule. ()

a. An alien shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)()

b. A nonresident alien as defined in Section 7701, Internal Revenue Code, is a nonresident for Idaho. If a nonresident alien has elected to be treated as a resident of the United States for federal income tax purposes, he shall determine his Idaho residency status as provided in Paragraph 031.01.a., of this rule. ()

02. Computation of Idaho Taxable Income. (3-20-97)

a. To compute the Idaho taxable income of an alien, the first step is to determine his taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes. (3-20-97)

b. Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. (3-20-97)

c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). However, a nonresident alien who qualifies as a student or business apprentice eligible for the benefits of Article 21(2) of the United States - India Income Tax Treaty is entitled to the standard deduction amount as if he were a resident for federal income tax purposes provided he does not claim itemized deductions. (7-1-99)

03. Filing Status. An alien shall use the same filing status for the Idaho return as used on the federal return. If for federal income tax purposes a married alien files as a nonresident alien and does not elect to be treated as a resident, the married alien shall use the filing status married filing separate on the Idaho return. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075). (3-20-04)
Section 63-3024, Idaho Code.

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-6-05)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (5-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

a. For taxable years beginning in 1987 through 1999:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,000.00 | \$0.00 | 2% of taxable income |
| \$1,000.00 | \$2,000.00 | \$20.00 | 4% of the amount over \$1,000.00 |
| \$2,000.00 | \$3,000.00 | \$60.00 | 4.5% of the amount over \$2,000.00 |
| \$3,000.00 | \$4,000.00 | \$105.00 | 5.5% of the amount over \$3,000.00 |
| \$4,000.00 | \$5,000.00 | \$160.00 | 6.5% of the amount over \$4,000.00 |
| \$5,000.00 | \$7,500.00 | \$225.00 | 7.5% of the amount over \$5,000.00 |
| \$7,500.00 | \$20,000.00 | \$412.50 | 7.8% of the amount over \$7,500.00 |
| \$20,000.00 or more | | \$1,387.50 | 8.2% of the amount over \$20,000.00 |

(3-20-04)

b. For taxable years beginning in 2000:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,022.00 | \$0.00 | 1.9% of taxable income |
| \$1,022.00 | \$2,044.00 | \$19.42 | 3.9% of the amount over \$1,022.00 |
| \$2,044.00 | \$3,066.00 | \$59.28 | 4.4% of the amount over \$2,044.00 |
| \$3,066.00 | \$4,088.00 | \$104.25 | 5.4% of the amount over \$3,066.00 |
| \$4,088.00 | \$5,110.00 | \$159.44 | 6.4% of the amount over \$4,088.00 |
| \$5,110.00 | \$7,666.00 | \$224.85 | 7.4% of the amount over \$5,110.00 |
| \$7,666.00 | \$20,442.00 | \$413.99 | 7.7% of the amount over \$7,666.00 |
| \$20,442.00 or more | | \$1,397.74 | 8.1% of the amount over \$20,442.00 |

(3-20-04)

c. For taxable years beginning in 2001:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|-----------|------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,056.00 | \$0.00 | 1.6% of taxable income |
| \$1,056.00 | \$2,113.00 | \$16.90 | 3.6% of the amount over \$1,056.00 |
| \$2,113.00 | \$3,169.00 | \$54.93 | 4.1% of the amount over \$2,113.00 |
| \$3,169.00 | \$4,226.00 | \$98.25 | 5.1% of the amount over \$3,169.00 |
| \$4,226.00 | \$5,282.00 | \$152.13 | 6.1% of the amount over \$4,226.00 |
| \$5,282.00 | \$7,923.00 | \$216.57 | 7.1% of the amount over \$5,282.00 |

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$7,923.00 | \$21,129.00 | \$404.09 | 7.4% of the amount over \$7,923.00 |
| \$21,129.00 or more | | \$1,381.30 | 7.8% of the amount over \$21,129.00 |

(3-20-04)

d. For taxable years beginning in 2002:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,087.00 | \$0.00 | 1.6% of taxable income |
| \$1,087.00 | \$2,173.00 | \$17.38 | 3.6% of the amount over \$1,087.00 |
| \$2,173.00 | \$3,260.00 | \$56.50 | 4.1% of the amount over \$2,173.00 |
| \$3,260.00 | \$4,346.00 | \$101.04 | 5.1% of the amount over \$3,260.00 |
| \$4,346.00 | \$5,433.00 | \$156.46 | 6.1% of the amount over \$4,346.00 |
| \$5,433.00 | \$8,149.00 | \$222.73 | 7.1% of the amount over \$5,433.00 |
| \$8,149.00 | \$21,730.00 | \$415.59 | 7.4% of the amount over \$8,149.00 |
| \$21,730.00 or more | | \$1,420.60 | 7.8% of the amount over \$21,730.00 |

(3-20-04)

e. For taxable years beginning in 2003:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,104.00 | \$0 | 1.6% of taxable income |
| \$1,104.00 | \$2,207.00 | \$17.66 | 3.6% of the amount over \$1,104.00 |
| \$2,207.00 | \$3,311.00 | \$57.39 | 4.1% of the amount over \$2,207.00 |
| \$3,311.00 | \$4,415.00 | \$102.64 | 5.1% of the amount over \$3,311.00 |
| \$4,415.00 | \$5,518.00 | \$158.93 | 6.1% of the amount over \$4,415.00 |
| \$5,518.00 | \$8,278.00 | \$226.25 | 7.1% of the amount over \$5,518.00 |
| \$8,278.00 | \$22,074.00 | \$422.16 | 7.4% of the amount over \$8,278.00 |
| \$22,074.00 or more | | \$1,443.06 | 7.8% of the amount over \$22,074.00 |

(3-20-04)

f. For taxable years beginning in 2004:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,129.00 | \$0 | 1.6% of taxable income |
| \$1,129.00 | \$2,258.00 | \$18.06 | 3.6% of the amount over \$1,129.00 |
| \$2,258.00 | \$3,387.00 | \$58.70 | 4.1% of the amount over \$2,258.00 |
| \$3,387.00 | \$4,515.00 | \$104.98 | 5.1% of the amount over \$3,387.00 |
| \$4,515.00 | \$5,644.00 | \$162.55 | 6.1% of the amount over \$4,515.00 |
| \$5,644.00 | \$8,466.00 | \$231.41 | 7.1% of the amount over \$5,644.00 |
| \$8,466.00 | \$22,577.00 | \$431.78 | 7.4% of the amount over \$8,466.00 |
| \$22,577.00 or more | | \$1,475.95 | 7.8% of the amount over \$22,577.00 |

(4-6-05)

g. For taxable years beginning in 2005:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|---------------|------------|-------------------------------------|
| At least | But less than | Is | Plus |
| \$0.00 | \$1,159.00 | \$0 | 1.6% of taxable income |
| \$1,159.00 | \$2,318.00 | \$18.54 | 3.6% of the amount over \$1,159.00 |
| \$2,318.00 | \$3,477.00 | \$60.26 | 4.1% of the amount over \$2,318.00 |
| \$3,477.00 | \$4,636.00 | \$107.78 | 5.1% of the amount over \$3,477.00 |
| \$4,636.00 | \$5,794.00 | \$166.89 | 6.1% of the amount over \$4,636.00 |
| \$5,794.00 | \$8,692.00 | \$237.53 | 7.1% of the amount over \$5,794.00 |
| \$8,692.00 | \$23,178.00 | \$443.29 | 7.4% of the amount over \$8,692.00 |
| \$23,178.00 or more | | \$1,515.25 | 7.8% of the amount over \$23,178.00 |

(4-11-06)

h. For taxable years beginning in 2006, as calculated on June 7, 2006:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|----------------------------|-------------------|-----------------|-------------------------------------------|
| At least | But less than | Is | Plus |
| <u>\$0.00</u> | <u>\$1,198.00</u> | <u>\$0</u> | <u>1.6% of taxable income</u> |
| <u>\$1,198.00</u> | <u>\$2,396.00</u> | <u>\$19.17</u> | <u>3.6% of the amount over \$1,198.00</u> |
| <u>\$2,396.00</u> | <u>\$3,594.00</u> | <u>\$62.30</u> | <u>4.1% of the amount over \$2,396.00</u> |
| <u>\$3,594.00</u> | <u>\$4,793.00</u> | <u>\$111.43</u> | <u>5.1% of the amount over \$3,594.00</u> |
| <u>\$4,793.00</u> | <u>\$5,991.00</u> | <u>\$172.53</u> | <u>6.1% of the amount over \$4,793.00</u> |
| <u>\$5,991.00</u> | <u>\$8,986.00</u> | <u>\$245.62</u> | <u>7.1% of the amount over \$5,991.00</u> |

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | |
|-----------------------------------|-------------|------------------|-------------------------------------|
| \$8,986.00 | \$23,963.00 | \$458.30 | 7.4% of the amount over \$8,986.00 |
| \$23,963.00 or more | | \$1,566.59 | 7.8% of the amount over \$23,963.00 |

()

(BREAK IN CONTINUITY OF SECTIONS)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code.

(3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of ~~limited~~ itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%) calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number (\$10,000/\$15,000 = 66.666% = .6667). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped (\$10,000/\$30,000 = 33.333% = .3333). This percent is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (4-11-06)()

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be

increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified

property. (3-20-97)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).
Section 63-3022H, Idaho Code. (3-20-97)

01. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

02. Holding Periods. (3-20-97)

a. In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. See Rule 173 of these rules for the determination of the required holding period for an interest in income of an S corporation or partnership. (7-1-98)()

b. Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: (7-1-98)

i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)

ii. Tangible personal property not used by a revenue-producing enterprise. (7-1-98)

c. Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

d. Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ~~fourteen ten~~ (140) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for ~~eighteen twelve~~ (182) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-15-02)(____)

ii. Assume the same facts as in the example in Subsection 171.02.ed.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least ~~eighteen twelve~~ (182) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (3-15-02)(____)

03. Holding Periods of S Corporation and Partnership Property. (7-1-98)

a. Property Distributed by an S Corporation to a Shareholder or a Partnership to a Partner. The holding period of property received from an S corporation or partnership includes the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or partnership. See Subsection 173.02 of these rules. (3-20-97)

b. Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, ~~limited to the length of time~~ and the shareholder or partner ~~has~~ held his interest in the S corporation or partnership for the required holding period. (7-1-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for an individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (4-5-00)

02. ~~Limitation of~~ Interest in Income of a Pass-Through Entity Limitation. (3-20-97)(____)

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. *The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property.* (3-20-97)(____)

b. Example. A shareholder in an S corporation had a twenty-five percent (25%) interest in income in

~~year one (1) 2003. At the beginning of year two (2), On January 10, 2005, the shareholder's ownership interest in income increased to fifty percent (50%). Fifteen (15) months later In September 2005, the S corporation recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held since year one (1) 2003. The shareholder reports fifty percent (50%) of the gain on his tax return for the year of sale, but is entitled to a capital gains deduction on only twenty five percent (25%) of the total gain. His capital gains deduction is limited to twenty five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full eighteen (18) months preceding the date of the sale of the property. Fifty percent (50%) of the gain, or ten thousand dollars (\$10,000) flows to the shareholder for the year of the sale to be reported on his individual income tax return based on his fifty percent (50%) interest in income. The shareholder did not hold his fifty percent (50%) interest in income for twelve (12) months, the required holding period. Therefore, his capital gains from qualified property is limited to his qualifying interest in income of twenty-five percent (25%) of the total gain, or five thousand dollars (\$5,000). If the shareholder had no other qualifying capital gains or losses, his capital gains deduction is three thousand dollars (\$3,000) computed as follows: (\$20,000 total gain X 25% qualifying interest X 60% = \$3,000 Idaho capital gains deduction.)~~ (3-15-02)(____)

c. The required holding period for an individual's interest in income is the time specified in Section 63-3022H(3), Idaho Code, for the property on which an Idaho capital gains deduction is being claimed. Different types of property have different time periods specified. For example, real property must be held twelve (12) months, but timber must be held twenty-four (24) months. As a result, if a partnership has gain from the sale of Idaho land, a partner must have held his interest in income for twelve (12) months. If a partnership has gain from the sale of Idaho timber, a partner must have held his interest in income for twenty-four (24) months. If a partnership has gain from both Idaho land and Idaho timber, a partner must meet both time requirements in order to claim the capital gains deduction on the gains from both types of property. If a partner holds his interest in income for only one (1) of the time periods required, the partner may claim the capital gains deduction only on the gain from that property. For example, if the partner held his interest in income for only eighteen (18) months, he would be entitled to claim a capital gains deduction only on the gain from the sale of the Idaho land, not on the gain from the sale of the Idaho timber. (____)

d. Tacked-on holding periods included in the holding period of an individual's partnership interest or an individual's S corporation stock, shall not apply in determining whether an interest in income has been held for the required time. (____)

03. **Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one-half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (____)

034. **Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

045. **Examples.** (3-20-97)

a. XYZ Farms, a multistate partnership, sold ~~a~~ three (3) parcels of farmland: one (1) in Idaho farmland purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). ~~The sixty thousand dollar (\$60,000) gain~~ The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of ~~nine six~~ nine thousand dollars (\$9,000), computed as follows: (\$60,000 Idaho gain X 75% apportionment factor = \$45,000 gain apportioned to Idaho X 1/3 interest = \$15,000 attributable to each partner X 60% = \$9,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain

net income from qualified property, or ~~twelve eight~~ thousand dollars (\$128,000). After 2001, the capital gains deduction returns to sixty percent (60%) or ~~nine six~~ thousand dollars (\$96,000). (5-3-03)(____)

b. ~~XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), computed as follows: (\$60,000 gain allocated to Idaho X 1/3 = \$20,000 partner's share X 60% = \$12,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000). Assume the same facts as in Paragraph 173.05.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return.~~ (5-3-03)(____)

c. ~~A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), or sixteen thousand dollars (\$16,000) for taxable year 2001 only. Assume the same facts as in Paragraph 173.05.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.05.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner.~~ (5-3-03)(____)

d. ~~Assume the same facts as in Paragraph 173.05.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667).~~ (____)

e. ~~An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.05.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667).~~ (____)

f. ~~Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction.~~ (____)

(BREAK IN CONTINUITY OF SECTIONS)

255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).
Section 63-3026A(4), Idaho Code. (3-20-97)(____)

01. In General. The exemptions and deductions allowable for federal purposes, except for the deduction of state income taxes, are allowed in part in computing Idaho taxable income. (3-20-97)

02. Proration Percentage. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. For taxable years beginning in or after 2007, the percentage shall be rounded to the nearest whole percent calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number (\$10,000 / \$15,000 = 66.666% = .6667). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped (\$10,000 / \$30,000 = 33.333% = .3333). The percentage may not exceed one hundred percent (100%), nor be less than zero (0). ~~(3-30-01)~~(_____)

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-30-01)

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage shall be between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage shall be zero (0). (3-20-97)

03. Standard Deduction for Married Filing Joint Returns. The proration percentage shall be applied after making the following calculations: (3-30-01)

a. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

b. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280). Sections 63-3027 and 63-3030(a)(9), Idaho Code. ~~(3-15-02)~~(_____)

01. In General. A partnership that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-5-00)

02. Exceptions to Apportionment Formula. If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following: ~~(4-5-00)~~(_____)

a. Separate accounting as provided in Rule 585 of these rules; ~~or~~ ~~(4-5-00)~~(_____)

b. The exclusion of a factor pursuant to Rule 590 of these rules; (_____)

~~b.c.~~ An additional factor or substitute factor pursuant to Rule 595 of these rules; ~~or~~ ~~(4-5-00)~~(_____)

d. The employment of any other method that would fairly represent the extent of business activity in Idaho. ()

03. Information Provided to Partners. The partnership shall provide to each partner information necessary for the partner to compute his Idaho income tax. Such information shall include: (4-5-00)

a. The apportioned share of each pass-through item of income and deduction; (4-5-00)

b. The apportioned share of each Idaho addition and subtraction; (4-5-00)

c. Idaho tax credits and tax credit recapture; (4-5-00)

d. Income allocated to Idaho; (3-15-02)

e. The partnership's property, payroll and sales factor numerators and denominators if the partner is not an individual; and (3-15-02)

f. The distributive share of partnership gross income multiplied by the Idaho apportionment factor, if the partner is an individual, trust or estate. (3-15-02)

281. -- 289. (RESERVED).

290. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- ELECTION (RULE 290).
Section 63-3022L, Idaho Code. (~~3-30-01~~)()

01. Election Provided in Section 63-3022L, Idaho Code. (3-30-01)

a. The election to have the entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, shareholder, partner, member, or beneficiary. If the individual has Idaho taxable income in addition to income described in Section 63-3022L, Idaho Code, the election is not available. (3-30-01)

b. The election is not available to corporations, partnerships or electing small business trusts, or to any other person who is not an individual. (3-30-01)

c. Permission from the Tax Commission to make the election is not required. (3-30-01)

d. The election is made by the individual. No statement or form is required. If the election is made, the entity shall report and pay the tax on the individual's Idaho taxable income ~~of the individual, as described in Subsection 290.02, on the entity's Idaho return.~~ The individual's Idaho taxable income is described in Rule 291 of these rules. (~~3-30-01~~)()

e02. Failure to Make Election. If the individual fails to make the election to have the entity pay the tax, and does not report and pay the tax on the income; described in ~~Subsection 290.02;~~ Rule 291 of these rules on an Idaho individual income tax return when such return is required, the entity shall be required to pay the tax on such income. (~~3-30-01~~)()

~~**02. Income Reportable to Idaho.**~~ (~~3-30-01~~)

~~**a. Compensation reportable to Idaho.**~~ (~~3-30-01~~)

~~**i. C-Corporations.** A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member.~~ (~~3-30-01~~)

~~**ii. S-Corporations.** An S corporation may be required to pay the tax on the compensation reportable to~~

~~Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. (3-30-01)~~

~~iii. Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. (3-30-01)~~

~~iv. Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. (3-30-01)~~

~~v. Compensation reportable to Idaho for an Idaho part-year resident or nonresident is determined pursuant to Rule 270 of these rules. (3-30-01)~~

~~b. Pass-through items reportable to Idaho. (3-30-01)~~

~~i. S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. (3-30-01)~~

~~ii. Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. (3-30-01)~~

~~iii. Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. (3-30-01)~~

~~e. Distributable net income reportable to Idaho. (3-30-01)~~

~~i. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-01)~~

~~ii. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-01)~~

~~03. **Capital Loss.** As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-01)~~

~~04. **Net Operating Loss.** As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(e), Idaho Code. (3-30-01)~~

291. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- TAXABLE INCOME (RULE 291).
Section 63-3022L, Idaho Code. ()

01. Compensation Reportable to Idaho. ()

a. C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. ()

b. S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. ()

c. Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. ()

d. Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. ()

e. Compensation reportable to Idaho for an Idaho part-year resident or nonresident is determined pursuant to Rule 270 of these rules. ()

02. Pass-Through Items Reportable to Idaho. ()

a. S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. ()

b. Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. ()

c. Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. ()

03. Distributable Net Income Reportable to Idaho. ()

a. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. ()

b. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. ()

04. Deductions That Are Subject to Limitations or Elections by Individuals. A pass-through entity is not allowed to deduct items that are subject to limitations or elections at the individual level. Examples of such items include the Section 179 deduction, research and experimental expenses, mining exploration and development costs, pre-productive period expenses, and passive activity losses. Individuals may not bypass limitations on deductions by electing to have the pass-through entity pay the tax. ()

05. Deductions That Are Not Allowed to S Corporations and Partnerships. ()

a. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. ()

b. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. ()

c. Nonbusiness Deductions. Deductions are not allowed for nonbusiness expenses of an individual, such as those claimed as itemized deductions, charitable contributions, or personal exemptions. ()

~~294~~2. -- 299. (RESERVED).

300. TAX ON CORPORATIONS (RULE 300).

Sections 63-3025 and 63-3025A, Idaho Code. (3-20-97)

01. Excise Tax. A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. (3-20-97)

02. Minimum Tax. A name-holder or inactive corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 300.03. (3-20-97)

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that

does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (3-20-97)

04. Protection Under Public Law 86-272. A corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. ()

(BREAK IN CONTINUITY OF SECTIONS)

700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- IN GENERAL (RULE 700).
Section 63-3029, Idaho Code. (~~7-1-98~~)()

01. Taxpayers Entitled to the Credit. The credit for taxes paid to another state shall be allowed only to qualifying individuals who are domiciled in Idaho at the time the income was earned in another state. An individual who is not domiciled in Idaho but who qualifies as a resident in accordance with Section 63-3013(b), Idaho Code, does not qualify for this credit. ()

02. Taxes Eligible for the Credit. The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. ()

043. Taxes Not Eligible for the Credit. Any tax or portion thereof imposed on capital stock, retained earnings, stock values, or a basis other than income is not eligible for the credit. (7-1-98)

024. Credit Calculated on a State-by-State Basis. The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

035. Income Tax Payable to Another State. The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (~~7-1-98~~)()

06. Limitations. The credit for taxes paid to another state shall be limited as follows: ()

a. The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, or trust. ()

b. If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit shall reduce the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three-hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual (\$400 - \$60 = \$340). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340). ()

c. The credit may not exceed the proportion of the tax otherwise due to Idaho that the amount of the

adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho (\$12,000/\$50,000 = 24% X tax paid to Idaho). See Rule 701 of these rules for the modifications to the other state's return. ()

047. Rounding to the Nearest Whole Percent. For taxable years beginning in or after 2007, the percentage calculated under Section 63-3029, Idaho Code, shall be ~~rounded to the nearest whole percent~~ calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number (\$10,000/\$15,000 = 66.666% = .6667). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped (\$10,000/\$30,000 = 33.333% = .3333). This percentage may not exceed one hundred percent (100%) nor be less than zero (0). ~~For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%).~~ (3-30-01)()

701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- MODIFICATIONS TO OTHER STATE'S ADJUSTED GROSS INCOME AND TAX (RULE 701).
Section 63-3029, Idaho Code. ()

01. In General. For purposes of the credit for income taxes paid to another state, adjusted gross income from sources in the other state means that portion of Idaho adjusted income derived from sources in the other state. ()

02. Modifications. The other state's income shall be restated to reflect additions and subtractions provided by Idaho law. The other state's tax must be restated to eliminate tax on income not also subject to tax under Idaho law. This includes the following: ()

- a. Individual and Fiduciary Tax Returns.** ()
 - i. Incorporating the additions and subtractions required under Idaho law.** ()
 - ii. Removing income that is not subject to Idaho income tax. For example, refunds of federal and state income taxes and social security income are not subject to Idaho income tax.** ()
 - iii. Removing the other state's additions and subtractions not required under Idaho law.** ()
- b. S Corporation and Partnership Returns.** ()
 - i. Incorporating the additions and subtractions required under Idaho law.** ()
 - ii. Removing income that is not subject to Idaho income tax. For example, interest income from obligations issued by the United States Government and federal and state income tax refunds are not subject to Idaho income tax.** ()
 - iii. Removing the other state's additions and subtractions not required under Idaho law.** ()
 - iv. Recalculating the other state's apportionment factor in accordance with Section 63-3027, Idaho Code, and related rules.** ()

03. Reporting Adjustments. The adjustments required in Subsection 701.02.b. of this rule shall be reported on a schedule provided by the taxpayer. ()

04. Tax Paid on Both Individual and Pass-Through Entity Returns. If a state imposes an income tax on both the S corporation or partnership and the individual shareholders or partners, the adjustments to income that are made to the entity's return as listed in Subsection 701.02.b. of this rule shall pass through to the individual

shareholder's or partner's return according to the shareholder's pro rata share of income or loss or the partner's distributive share of partnership profits. Credit shall be allowed for income taxes paid at both the entity and individual level. ()

06. Modification to Other State's Income Tax. The other state's income tax must be recalculated to exclude items of income and loss that are not subject to Idaho income taxation. However, if this recalculation results in a tax that exceeds the amount of tax actually paid, the credit shall be limited to the amount of tax actually paid to the other state. See Rule 700 of these rules for the limitations that apply. ()

702. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- PART-YEAR RESIDENTS (RULE 702).

Section 63-3029, Idaho Code. ()

01. Income Subject to Tax by Both States. For purposes of the credit for income taxes paid to another state, income subject to tax by both states shall mean the total amount of income a taxpayer receives from sources outside of Idaho during the portion of the year he is domiciled in Idaho. Both the source state and Idaho must impose an income tax on this income. Income received during the portion of the year the taxpayer was not domiciled in Idaho does not qualify. ()

02. Examples. The following examples assume the taxpayer earned only wage income. ()

a. Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. ()

b. Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. ()

c. Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his wages earned during the year since he is domiciled in California. Idaho will tax only the wages he earned in Idaho while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California because he is not domiciled in Idaho. ()

703. -- 704. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (RULE 745).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (5-3-03)

01. In General. A revenue-producing enterprise means an Idaho business that begins with a natural resource and produces, assembles, fabricates, manufactures, or processes a value-added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following: (3-30-01)

a. Farming activities identified in Section 464, Internal Revenue Code, that result in a value-added

- product; (3-30-01)
- b.** Mining; (3-30-01)
 - c.** Logging; (3-30-01)
 - d.** Extracting a natural resource. (3-30-01)
- 02. Nonqualifying Activities.** Examples of businesses that do not qualify as a revenue-producing enterprise include a business performing the following activities: (3-30-01)
- a.** Retail sales; (3-30-01)
 - b.** Professional or managerial services; (3-30-01)
 - c.** Repair services or other service related activities; (3-30-01)
 - d.** The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing; (3-30-01)
 - e.** The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing; (3-30-01)
 - f.** Transportation activities, unless they are an integral part of a qualifying activity; (3-30-01)
 - g.** Activities that consume a natural resource in a process, but do not add value to the natural resource. (3-30-01)
- 03. Examples.** (3-30-01)
- a.** A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue-producing enterprise. (3-30-01)
 - b.** A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)
 - c.** A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue-producing enterprise. The selling activity does not qualify. (3-30-01)
 - d.** A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)
 - e.** A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value-added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue-producing enterprise. (3-30-01)
 - f.** A taxpayer's Idaho business includes using water in a process to produce electricity. Because the Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)
 - g.** A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business

unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)

04. Multiple Activities. (3-30-01)

~~**a.** If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and at least fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer may treat the entire Idaho business as a revenue-producing enterprise. (3-30-01)~~

~~**b.** If a taxpayer's is engaged in trade or business includes both a revenue-producing enterprise and other activities, and less than fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer must calculate qualifying new employees and the net income limitation based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-01)(____)~~

05. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

06. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise shall be determined separately for each corporation that is a member of the unitary group. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

747. CREDIT FOR QUALIFYING NEW EMPLOYEES -- NET INCOME OF A ~~REVENUE-PRODUCING ENTERPRISE~~ TRADE OR BUSINESS (RULE 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2000 on~~ and after January 1, 2007~~5~~. (5-3-03)(____)

01. ~~Entire Idaho Business Qualifies as a Revenue-Producing Enterprise~~ Net Income From the Taxpayer's Trade or Business. ~~If the entire Idaho business qualifies as a revenue-producing enterprise or the taxpayer treats the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, a taxpayer is claiming the credit under Section 63-3029F, Idaho Code, the net income of the taxpayer's trade or business shall be calculated as follows:~~ (3-30-01)(____)

a. Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

b. C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

c. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified ~~to restore~~ as follows: the deduction ~~of for~~ income reported by shareholders on their Idaho income tax returns ~~and before~~ shall be added back, the addition of for compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-01)(____)

d. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified ~~to restore~~ as follows: the deduction ~~of for~~ income reported by partners on their Idaho income tax returns ~~and before~~ shall be added back, the addition of for compensation or income attributable to individual partners who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-01)(____)

~~**02. Idaho Business with Multiple Activities.**~~ (3-30-01)

~~a. If the Idaho business has multiple activities resulting in only a portion of the business qualifying as a revenue-producing enterprise, and the taxpayer does not treat the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated for the portion of the Idaho business that qualifies as a revenue-producing enterprise based on the number of employees in the revenue-producing enterprise compared to the number of employees in the entire business. The number of employees in the revenue-producing enterprise shall be calculated in accordance with Subsection 746.02 of these rules. (3-30-01)~~

~~b. If the calculation of net income in Subsection 747.02.a. does not fairly represent the net income of the revenue-producing enterprise, the taxpayer may propose or the Tax Commission may require an alternative method. (3-30-01)~~

032. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

771. -- 7874. (RESERVED).

775. CREDIT FOR LIVE ORGAN DONATION EXPENSES (RULE 775).
Section 63-3029K, Idaho Code. ()

01. Credit Allowed. The credit for live organ donation expenses allowed by Section 63-3029K, Idaho Code, applies to live organ donation expenses incurred by a taxpayer during taxable years beginning on or after January 1, 2007. ()

02. Limitations. The credit allowed to an individual for the taxable year in which the live organ donation occurs is limited to the lesser of: ()

a. The amount of live organ donation expenses paid by the taxpayer during the taxable year, or ()

b. Five thousand dollars (\$5,000). ()

03. Live Organ Donation. A live organ donation means a donation by a living individual who donates the following for transplanting in another individual: ()

a. Human bone marrow, or ()

b. Any part of an organ including the following: ()

i. Intestine. ()

ii. Kidney. ()

iii. Liver. ()

iv. Lung, or ()

v. Pancreas. ()

04. Live Organ Donation Expenses. Qualifying expenses shall be directly related to a live organ donation by the taxpayer or by a dependent of the taxpayer and shall include the following: ()

- a.** The unreimbursed cost of travel paid by the taxpayer to and from the place where the donation operation occurred. ()
- b.** Unreimbursed lodging expenses paid by the taxpayer. ()
- c.** Wages or other compensation lost because of the taxpayer's absence from work during the donation procedure and convalescence. ()
- 05.** Carryover. The carryover period for the credit for live organ donation expenses is five (5) years. ()
- 776. -- 784.** (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

- 799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).**
Section 63-3029P, Idaho Code. (5-3-03)
- 01. Tax Liability.** Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)
- 02. Nonrefundable Credits.** A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)
- a.** Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)
- b.** For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)
- c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)
- d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)
- e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)
- f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)
- g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)
- h.** Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)
- i.** Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
- j.** Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
- k.** Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)

- l.** Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. (4-11-06)
- m.** Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. (4-11-06)
- n.** Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. (4-11-06)
- o.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)
- p.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)
- q.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)
- r.** Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. ()
- 03. Adjustments to Credits.** (4-11-06)
 - a.** Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
 - b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. (4-11-06)
 - c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).

Section 63-3030, Idaho Code. ()

01. In General. Persons who meet the filing requirements under Section 63-3030, Idaho Code, shall file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law. ()

02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code. If an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual shall not be required to file an Idaho individual income tax return for that taxable year. ()

03. Corporations Included in a Unitary Group. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules. ()

04. Taxpayers Protected Under Public Law 86-272. A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it shall be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and

sales shall be included in the computation of the group factor denominators and its business income shall be included in the computation of apportionable income for the unitary group. ()

~~801.~~ 802. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

830. INFORMATION RETURNS (RULE 830).

Section 63-3037, Idaho Code. (3-20-97)

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)

e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)

f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)

g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)

h. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

02. Submitting Returns. Information returns shall be submitted to the Tax Commission through magnetic media, electronic filing, or on federal Form 1099-or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (~~3-20-97~~)()

03. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

855. PERMANENT BUILDING FUND TAX (RULE 855).

Sections 63-3082 through 63-3087, Idaho Code. (3-20-97)

01. In General. The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

02. Pass-Through Entities. The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return

of another taxpayer. If an election is made under Section 63-3022L, Idaho Code, the entity shall pay the tax for each individual partner, member, shareholder, or beneficiary making the election. (3-30-01)

03. Corporations Included in a Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (~~3-20-97~~)()

04. Inactive or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax. (3-20-97)

05. Taxpayers Protected Under Public Law 86-272. The permanent building fund tax shall not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. ()

(BREAK IN CONTINUITY OF SECTIONS)

870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Idaho Withholding Account Number Required. An Idaho withholding account number is required of: (3-20-97)

a. Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and (3-20-97)

b. Each person who withholds Idaho income tax, ~~whether required or voluntary.~~ (~~3-20-97~~)()

02. Idaho Withholding Account Numbers Are Not Transferable. If a business is sold, the new employer shall apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity shall apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than fifty dollars (\$50) monthly or six hundred dollars (\$600) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (~~4-6-05~~)()

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual

threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. (4-6-05)

ii. Threshold amounts:

| Withholding Periods Beginning | Monthly Threshold Amounts | Annual Threshold Amounts |
|---------------------------------------------------------|----------------------------------|---------------------------------|
| Prior to January 1, 2004 | \$5,000 | \$60,000 |
| On or After January 1, 2004, but Before July 1, 2005 | \$6,000 | \$72,000 |
| On or After July 1, 2005 | \$20,000 | \$240,000 |

(4-6-05)

~~iii. Filing status changes will occur only in January.~~

~~(4-6-05)~~

c. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of January. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-11-06)

02. Filing of Annual Reconciliation Returns.

(4-6-05)

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: (4-6-05)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. (4-6-05)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. (4-6-05)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)

b. The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the

taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).

Sections 63-3035 and 63-3036, Idaho Code. (4-6-05)

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (4-6-05)

02. Furnishing Forms W-2 to Employees. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-05)

03. Filing Forms W-2 With the Tax Commission. ()

a. On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (4-6-05)()

b. W-2s filed electronically shall be filed with the Tax Commission on or before March 31. ()

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (4-6-05)

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner or through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (4-6-05)()

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on workdays, hours, mileage or commissions. (4-6-05)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

a. The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

b. The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- DEFINITIONS (RULE 940).

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

02. New Plant and Building Facilities. New plant and building facilities are facilities where employees are physically employed. ()

03. Investment in New Plant. Investment in new plant shall mean new plant and building facilities: ()

a. That are constructed or erected by the taxpayer, or ()

b. That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ()

c. That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

04. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

05. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

06. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may not begin prior to January 1, 2006. It shall begin the earlier of: ()

i. The date of a physical change to the project site, or ()

ii. The date new employees begin providing personal services at the project site. ()

b. The project period shall end at the earlier of: ()

i. The conclusion of the project or, ()

ii. December 31, 2010. ()

07. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) contiguous site. ()

08. Small Employer Investment Tax Credit. Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. ()

09. Small Employer New Jobs Tax Credit. Small employer new jobs tax credit shall mean the

additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ()

10. Small Employer Real Property Improvement Tax Credit. Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ()

11. Small Employer Tax Incentive Criteria. Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. ()

12. Small Employer Tax Incentives. Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. ()

941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- IN GENERAL (RULE 941).
Sections 63-4401 and 63-4406, Idaho Code. ()

01. Coordination with Idaho Corporate Headquarters Incentive Act of 2005. The tax incentives provided by the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. ()

02. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ()

03. Reorganizations, Mergers and Liquidations. The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies shall not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions shall apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. ()

04. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. ()

05. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ()

942. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 942).
Section 63-4402, Idaho Code. ()

01. In General. The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: ()

a. Making capital investment in new plant and building facilities totaling five hundred thousand dollars (\$500,000) or more; ()

b. Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code; ()

c. Employment increases more than the ten (10) new employees described in Paragraph 942.01.b. of this rule shall meet the requirements of Section 63-4402(2)(j)(ii)(2), Idaho Code; and ()

d. Once the increase in employment has been reached, maintaining that increased employment in Idaho for the remainder of the project period. ()

02. Certification. A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ()

a. A description of the qualifying project; ()

b. The estimated or actual start date of the project; ()

c. The estimated or actual end date of the project; ()

d. The location of the project site or sites; ()

e. The estimated or actual number of new jobs created during the project period; and ()

f. The estimated or actual cost of capital investment in new plant and building facilities for each year in the project period. ()

03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ()

943. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943).
Sections 63-4403 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ()

b. The credit applies to qualified investments placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. Taxpayers Entitled to the Credit. The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Qualified Investments. ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-4403, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. Limitations. The small employer investment tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: ()

i. Seven hundred fifty thousand dollars (\$750,000); or ()

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer investment tax credit is fourteen (14) years. ()

06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investments in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944). Sections 63-4404 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the small employer real property improvement tax credit, buildings and structural

components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit. ()

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ()

i. One hundred twenty-five thousand dollars (\$125,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. ()

945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945). Sections 63-4405 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ()

02. Taxpayers Entitled to the Credit. The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Calculating Number of Employees. ()

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections

63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ()

i. The employee must have worked primarily within the project site for the taxpayer. ()

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()

iv. The employee must have been subject to Idaho income tax withholding. ()

v. The employee must have been covered for Idaho unemployment insurance purposes. ()

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()

b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()

04. Calculating the Number of New Employees. ()

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()

i. The number of employees for the prior taxable year; or ()

ii. The average of the number of employees for the three (3) prior taxable years. ()

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ()

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ()

06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. ()

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

946. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- RECAPTURE (RULE 946). Section 63-4407, Idaho Code. ()

01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. ()

02. Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. ()

03. Early Disposition of Investment in New Plant. ()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount shall be computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used: ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used: ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used: ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used: ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ()

04. Failure to Maintain Increased Employment. ()

a. If the required increased level of employment is not maintained for the entire recapture period, the recapture amount shall be computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used: ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used: ()

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used: ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used: ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ()

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If the investment in new plant is disposed of or otherwise ceases to qualify before the close of the recapture period while in the hands of an acquiring taxpayer who succeeded to unused small employer investment tax credit or small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the acquiring taxpayer shall be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture when an acquiring taxpayer succeeded to unused small employer investment tax credit and small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the recapture period shall begin with the date on which the property was placed in service by the transferor taxpayer and shall end with the date of the disposition by, or cessation with respect to, the acquiring taxpayer. ()

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.01 - IDAHO INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-0602
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(s) 63-105 and 63-3039.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 18, 2006
10:00 a.m.
Idaho State Tax Commission
First Floor, Conference Room 5

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:

Rule 600: Amend Income Tax Rule 600 to add to Subsection 04, Intercompany Transactions, paragraphs addressing dividends from real estate investment trusts and regulated investment companies, Internal Revenue Code Section 1248 dividends, and dividends received from stock insurance subsidiaries. Add information to Subsection 05, Insurance Companies, that clarifies insurance companies are included in the combined report, but their tax is deducted from the tax liability computed for the unitary group if paying the Idaho premium tax.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0602

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).

Section 63-3027(t), Idaho Code.

(3-20-97)

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (4-6-05)

02. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (7-1-98)

03. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-98)

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

a. Dividends received from a real estate investment trust or a regulated investment company and not included in the pre-apportionment tax base as a result of the federal deduction for dividends paid allowed to the dividend payor are not eliminated as intercompany transactions in computing combined income. ()

b. Internal Revenue Code Section 1248 Dividends. ()

i. Taxpayers Using the Worldwide Filing Method. A corporation included in a worldwide combined group shall treat Section 1248 dividends as dividends for Idaho income tax purposes. An intercompany dividend elimination is allowed to the extent dividends received are paid from current or prior year earnings previously included in income subject to apportionment. ()

ii. Taxpayers Using the Water's Edge Filing Method. A corporation included in a water's edge combined group shall treat Section 1248 dividends as dividends that qualify for the dividend exclusion allowed by Section 63-3027C(c)(1), Idaho Code. ()

c. Dividends received from a stock insurance subsidiary and deducted by a mutual insurance holding company or an intermediate holding company pursuant to Section 41-3821, Idaho Code, are not eliminated as intercompany transactions in computing combined income. ()

05. Insurance Companies. Pursuant to Section 41-405, Idaho Code, ~~an insurance company subject to the premium tax may not be included in a combined group~~ payment of an Idaho tax upon an insurance company's premiums shall be in lieu of an income tax. (3-20-97)()

a. If an insurance company is a member of a unitary business and pays the Idaho premium tax, the insurance company shall be included in the combined group and its income and factor attributes included in the combined report. The income tax attributable to the insurance company shall be deducted from the total tax computed in the combined report. Income tax credits that the insurance company may have earned may not be shared with other members of the unitary group. ()

b. If an insurance company is a member of a unitary business and pays a premium tax to a state other than Idaho, or does not pay a premium tax to any state, the insurance company shall be included in the combined group and its income and factor attributes included in the combined report. The insurance company shall be liable for the Idaho income tax computed on its activity in Idaho and is not exempt from the income tax as a result of Section 41-405, Idaho Code. ()

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0601

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) 63-105, 63-3624, 63-3635, and 63-3039.

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 18, 2006.

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:

Sales Tax Rules 001, 004, 005, and 006 are not in the format recommended by the Department of Administration's Office of Administrative Rules:

Rule 001: Needs to be divided into 2 paragraphs.

Rule 004: Currently is the "public records act" rule, should be "incorporation by reference" rule. Amended to incorporate by reference IDAPA 35.02.01 "Administration and Enforcement Rules."

Rule 005: Amend Rule to update the web address and e-mail address.

Rule 006: Put the public records statement in a new rule.

Rule 011: To strike the statement that sales of intrastate charter flights are taxable. Taxation of air transportation is barred by federal law.

Rule 019: To amend the rule to state that sheriff's offices are assigned a seller's permit number and must file returns quarterly. This brings the rule into conformity with administrative practice.

Rule 037: To clarify that "transporting freight or passengers for hire" means providing transportation services to the public and not just to related parties.

Rule 051: Rule 051 currently states that sales of some discount memberships sold by retailers are taxable. Courts in other states have ruled that the memberships are sales of intangibles and are not taxable. Also, the rule needs to clarify the application of the tax to "buy one get one free" offers and complementary items given when another item is purchased. The rule is being amended to state that discount memberships are intangible and their sale is not taxable. Also, to that the price subject to tax in "buy one get one free" offers is the amount actually paid by the customer. The retailer does not owe use tax on the item given away. Finally, the amendment will clarify that no tax is due on complimentary items given away when a purchase of tangible personal property is required as long as the sale of the item purchased is taxable.

Rule 101: To delete an obsolete statement in Subsection 101.01 and correct the statements in subsections 101.03.b. and 101.06 so the rule conforms to the statute. To add a new subsection stating that the vehicles in a fleet that do not meet the 10% out of state mileage requirement of Section 63-3622R, Idaho Code, will become subject to use tax at the end of the registration period.

Rule 107: To add a statement clarifying that an Idaho resident who forms an LLC in another state for the primary purpose of purchasing one or more motor vehicles does not qualify for the nonresident exemption in Section 63-3621, Idaho Code, and to add a subsection clarifying that credit will be given against any Idaho use tax due for local sales taxes paid in Alaska if the goods are then brought to Idaho.

Rule 119: Strike the obsolete reference to Form IBR-2.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0601

001. TITLE AND SCOPE (RULE 001).

01. Title. These rules shall be cited as IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules." ()

02. Scope. These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose an excise tax upon each sale at retail of the sales price of all property subject to taxation under this act and on the storage, use, or other consumption in this state of tangible personal property. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS INCORPORATION BY REFERENCE (RULE 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. These rules incorporate IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules". (3-15-02)()

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The telephone number for Taxpayer Services is (208) 334-7660, or toll free at 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is ~~taxrep@tax.state.id.us~~ taxrep@tax.idaho.gov. The Tax Commission's web site is www.tax.idaho.gov. All offices are open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-15-02)()

02. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

006. PUBLIC RECORDS ACT COMPLIANCE (RULE 006).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. ()

~~0067.~~ -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

011. RETAIL SALES - SALE AT RETAIL (RULE 011).

The Idaho Sales Tax is a tax on retail sales. Retail sales include all sales of tangible personal property except for property that will be resold, leased, or rented in the regular course of the buyer's business. (7-1-93)

01. Retail Sales. Retail sales also include: (7-1-93)

a. Sales to any person who constructs, alters, repairs or improves real property regardless of whether the person improving the property intends to resell it. See ~~ISTC~~ Rule 012 of these rules. (7-1-93)()

b. Producing or fabricating property to the special order of the customer. See ~~ISTC~~ Rule 029 of these rules. (7-1-93)()

c. Furnishing, preparing or serving food, meals or drinks for compensation. See ~~ISTC~~ Rule 041 of these rules. (7-1-93)()

d. Admission charges. See ~~ISTC~~ Rule 030 of these rules. (7-1-93)()

e. Charges for the use or privilege of using tangible personal property or facilities for recreation. See ~~ISTC~~ Rules 030 and 047 of these rules. (7-1-93)()

f. Providing hotel, motel, tourist home and trailer court accommodations. See ~~ISTC~~ Rule 028 of these rules. (7-1-93)()

g. Leasing or renting tangible personal property. See ~~ISTC~~ Rule 024 of these rules. (7-1-93)()

h. ~~Charges for on-demand, intrastate charter flights.~~ For sales of air transportation services see ~~ISTC~~ Rule 037 of these rules. (7-1-93)()

02. Retail Sales of Tangible Personal Property Together with Services. The sales tax applies to

retail sales of tangible personal property. It does not apply to the sale of services except as stated above. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill. To determine whether a transaction is a retail sale of tangible personal property or a sale of services, the following tests must be applied. (7-1-93)

a. To determine whether a transfer of tangible personal property is a taxable retail sale or is merely incidental to a service transaction, the proper test is to determine whether the transaction involves a consequential or inconsequential professional or personal service. If the service rendered is inconsequential, then the entire transaction is taxable. If a consequential service is rendered, then it must be determined whether the transfer of the tangible personal property is an inconsequential part of the transaction. If so, then none of the consideration paid is taxable. (7-1-93)

b. To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction must be determined; that is, is the buyer seeking the service itself, or the property produced by the service. (7-1-93)

c. When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not. (7-1-93)

03. Determining the Type of Sale. To determine whether a specific sale is a sale of tangible personal property, a sale of services or a mixed transaction, all the facts surrounding the case must be studied and the tests described above must be applied. Here are some examples. (7-1-93)

a. Example 1: An attorney is retained by a client to prepare his will. The attorney prepares the will, sees that it is properly executed and bills the client. The physical document, the will, is then transferred from the attorney to the client. This is a sale of services because the client's object is not to obtain the will itself, but to ensure that his estate is disposed of in a certain way when he dies. Since, the transaction between the attorney and the client is not a retail sale of tangible personal property, no sales or use tax applies. However, the attorney must pay sales or use tax when he buys stationery and other equipment to prepare the will. Compare Example 5. (7-1-93)

b. Example 2: The attorney in Example 1 prepares a form book of wills which he intends to sell to other attorneys. The will he prepared in Example 1 is included in the form book. The sale of the form book to other attorneys is a taxable retail sale of tangible personal property. From the buyer's point of view, the object of the sale is to obtain the book, which is tangible personal property. The fact that special skill or knowledge went into the preparation of the book and is reflected in the purchase price does not make the sale of the form book a service transaction. (7-1-93)

c. Example 3: An architect is hired to prepare construction plans for a house. He prepares the plans and delivers them to his client. As in the example of the attorney preparing the will, this is a sale of services and the transfer of the tangible personal property, the plans, is inconsequential the transaction. No sales or use tax is due on the sale of the plans. (7-1-93)

d. Example 4: The architect in Example 3 is asked to provide additional copies of the same plans to his original client or to a third party. The architect copies the plans on a duplicating machine and sells them to the requesting party. This is a taxable retail sale of tangible personal property, since the buyer's object is to obtain the property, the plans. (7-1-93)

e. Example 5: An artist is commissioned to paint an oil portrait. When the portrait is completed, ownership is transferred to the client who pays the artist a lump-sum amount for the portrait. This is a taxable retail sale of tangible personal property because the buyer's object is to obtain the portrait. If the artist otherwise qualifies as a retailer, he is required to collect and remit sales tax on the sale of the portrait. (7-1-93)

f. Example 6: An automobile repair shop does repair work for a customer. To do the work, the shop must replace certain parts on the automobile. The repair shop bills its customer an amount for the repair parts and a separate amount for labor. This is a mixed transaction. As long as the sale of the tangible personal property, the parts, and the sale of services, the labor, are separately stated, sales tax is due only on the sale of the parts and not on the charge for labor. However, allocation of the total charge between parts and labor must be reasonable. If part of the charge for parts is unreasonably attributed to the cost of labor, the allocation may be adjusted by the Tax Commission. (7-1-93)

g. Example 7: A retail clothing store provides needed alterations to items purchased by customers. Even though the sale depends on the alterations being done, the service is incidental to the sale of the property. The entire transaction is a retail sale subject to tax on the total price paid by the buyer, even if the charge for the alteration labor is separately stated. (7-1-93)

04. Kinds of Services Incidental to the Sale. Two (2) kinds of services rendered incidental to a retail sale are specifically exempt from tax if the charge for the service is separately stated. They are: (7-1-93)

a. Charges for transportation after the sale. See Section 63-3613, Idaho Code, and *STC* Rule 061 of these rules; and (7-1-93)(____)

b. Installation charges. See Section 63-3613, Idaho Code, and *STC* Rule 012 of these rules. (7-1-93)(____)

05. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for transportation or installation may not be used to avoid tax on the actual sales price of tangible personal property. If the allocation of the total price is unreasonable, the State Tax Commission may adjust it. (7-1-93)

06. Tangible Personal Property Used or Consumed by a Business. Tangible personal property used or consumed by a business in performing a nontaxable service is subject to sales or use tax. See *STC* Rule 072 of these rules. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

019. SALES BY COUNTY SHERIFFS (RULE 019).

01. Sales. Where tangible personal property is sold by a county sheriff, either as a result of a court order or pursuant to any summary notice and sale foreclosure procedure, a sales tax shall be assessed and collected by the county sheriff at the time of the sale in the same manner as required of any other seller. (7-1-93)

02. Requirement to Register. There is no requirement for the various sheriff's offices to register with the Commission. Each sheriff's office in the state of Idaho is assigned a seller's permit number *to be used in such cases and must file returns quarterly. Although their offices are not required to file the regular sales tax report form, they shall be required to complete and file the Commission County Assessor's or Sheriff's Sales Tax Return, Form ST-852, on the twentieth (20th) day of the month following the month in which sales occur.* Sheriffs' offices must report all retail sales on Form ST-850. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

a. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

b. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

c. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

d. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

e. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-20-04)

f. Day. For the purpose of this rule any part of a day is a day. (7-1-94)

g. Transportation of freight or passengers for hire. For the purposes of this rule, "transportation of freight or passengers for hire" means the business of transporting persons or property for compensation. Such transportation must be offered to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. ()

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

a. Primarily used to transport passengers or freight for hire; (2-18-02)

b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.~~ed.~~ or 037.01.~~de.~~ of this rule; and ~~(4-11-06)~~()

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

04. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

05. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

a. Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or

use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

06. Air Ambulance Service. Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

07. Flying Instructions. Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

08. Recreational Flights. Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

09. Aircraft Held for Resale. Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

10. Fuel. The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES (RULE 051).

01. Adjustments That Apply After Tax Calculation. Tax must be charged before deducting the following: (2-18-02)

a. Cash discounts. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence. (7-1-93)

b. Manufacturer's rebates. Except as provided by Subsection 051.02 of this rule, sales tax must be computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received

by the purchaser from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price subject to tax. Rebates paid by a retailer to the consumer will also be included in the price subject to sales tax if the retailer has been reimbursed by a third party, such as the manufacturer. (2-18-02)

c. Manufacturer's discount coupons. Sales tax must be computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the purchaser to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer. (7-1-98)

d. Food Stamps and WIC. Purchases of food with coupons issued under the Federal Food Stamp Program or food checks issued by the Federal Special Supplemental Food Program for Women, Infants, and Children, (WIC), are exempt from sales or use tax. When a purchaser uses manufacturer's discount coupons along with food stamps or WIC checks to purchase food items that qualify under these programs, the discount value of the coupon is subject to sales tax. For example, a food stamp recipient purchases fifteen dollars (\$15) worth of eligible food, surrenders manufacturer's discount coupons valued at two dollars (\$2), and pays with thirteen dollars (\$13) in food stamps. Sales tax is due on the two dollar (\$2) discounted amount. The purchaser may not use food stamps or WIC checks to pay sales tax due. (7-1-98)

02. Adjustments That Apply Before Tax Calculation. Tax is charged after the deduction of the following: (2-18-02)

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the purchaser. (7-1-93)

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a purchaser which is conditioned upon the recipient making a purchase from the retailer. However, if a retailer is reimbursed by a manufacturer or other third party, the transaction is not a retailer's rebate and the rebate amount is included in the sales price subject to sales tax. This would be the case when a purchaser sends the rebate claim to the retailer, the retailer sends the rebate amount to the purchaser and the manufacturer reimburses the retailer. (2-18-02)

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price. (7-1-93)

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a purchaser of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax IF the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice must show the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule. (7-1-96)

03. Coupon Books. ~~A coupon book is a set of two (2) or more coupons sold to a purchaser who may use the coupons as all or part of the purchase price of tangible personal property subject to sales taxes. The sale of coupon books is not subject to sales tax. When a retailer discount coupon from a coupon book is used to purchase merchandise, the discount allowed by the coupon is not included in the purchase price subject to tax. Sales tax applies to the amount paid by the purchaser to the retailer after allowance of the discount permitted by the coupon.~~ (7-1-98)(____)

a. The sale of a coupon book that contains coupons offering discounts is deemed to be the sale of an intangible and is therefore not taxable. (____)

b. When the purchaser of a coupon book redeems one (1) of the coupons, the discount allowed by the coupon is not included in the purchase price subject to tax if the retailer is not reimbursed by a manufacturer or other third party. (____)

04. Donated Goods. The donor is the consumer of donated goods and must pay sales or use tax on the purchase price of the goods. (7-1-98)

05. Gift Certificates. A gift certificate purchased from a vendor entitles a recipient to tangible personal property or services when presented to the vendor. The purchase of a gift certificate is not a taxable transaction. When the gift certificate is presented for redemption a sale is consummated. If the sale is a transfer of tangible personal property, the vendor must collect sales tax at the time of sale. Tax applies to the purchase price of the tangible personal property, irrespective of any cash refunded on any difference between the face value of the gift certificate and the purchase price. If the sale is for services not subject to tax under the Sales Tax Act, the vendor will not collect sales tax. (7-1-93)

06. ~~Discount Purchasing Memberships and Cards.~~ ~~The purchase of a card or membership which entitles the holder to purchase tangible personal property at a discounted price is a sale subject to sales tax, if the seller of the membership is the same as the seller of the merchandise. Examples of taxable fees include membership fees to rent or purchase from video rental stores, discount lumber retail outlets, and discount dry goods outlets.~~ **Buy One Get One Free Discounts.** If a retailer offers a "buy one get one free" discount in which the buyer purchases an item and receives another item of the same kind at no additional charge, the price subject to tax is the actual price paid after the discount is taken. Use tax is not applicable to the item sold at no charge; however, if a manufacturer's discount allows the purchaser to receive a free item for which the retailer will be reimbursed by the manufacturer the price subject to tax is the full amount before the discount is calculated. (7-1-98)()

07. Complimentary Gift With Purchase of an Item. ()

a. If a retailer offers a complimentary item to a customer at the time of, and in connection with, the sale of tangible personal property, the gift is considered a part of the sale. The item given away is deemed to be purchased for resale by the retailer; however, if the sale is of an item exempt from tax and the sale of the gift item would have been taxable, the retailer is responsible for use tax on the gift. This subsection applies only to sales of tangible personal property. ()

i. Example: A retailer advertises that every purchaser of a refrigerator will receive a bike at no additional charge. Since both the bike and the refrigerator were purchased for resale, the retailer would not owe tax when it purchases either. When it sells the bike together with the refrigerator, the amount subject to sales tax is the sales price of the refrigerator. ()

ii. Example: A retailer offers to give a free coffee mug to anyone who purchases fifteen (15) gallons of gas. Since the sale of the gasoline is exempt pursuant to Section 63-3622C, Idaho Code the retailer would not charge any tax to the purchaser. The retailer must pay use tax on its purchase price of the coffee mug. ()

b. If a retailer offers to give away a promotional item to anyone with no purchase required, then the retailer did not purchase the promotional item for resale. The retailer must pay sales or use tax on its purchase price of the promotional items given away. ()

c. This rule applies only to items given away by sellers of tangible personal property. See Rule 028 of these rules for items given away by hotels and motels. See Rule 041 of these rules for items given away by restaurants. ()

(BREAK IN CONTINUITY OF SECTIONS)

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).

01. In General. An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. ~~The exemption is effective beginning April 1, 1989.~~ Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (7-1-93)()

02. Motor Vehicles. An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; (4-6-05)

b. Register the vehicle under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

c. Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the international registration plan. (4-6-05)

03. Trailers. An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in ~~any calendar year~~ any registration period under the International Registration Plan or other similar plan. (7-1-93)()

04. Title or Base Plate. The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

05. Documentation. Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

06. Repair Parts and Supplies. The exemption does not apply to parts, ~~glider kits as defined by Section 49-123, Idaho Code~~, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan or other similar plan. (7-1-93)()

07. Failure To Meet Interstate Mileage Requirement. Use tax will become due at the end of any registration period for which the out of state mileage is less than ten percent (10%) of the total fleet mileage. Tax will be due on the value of the trucks and trailers on the twentieth day of the month following the end of the registration period. ()

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. Gifts of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

- time.
- a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)
 - b. The recipient assumes no indebtedness. (7-1-93)
 - c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)
 - d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)
 - i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)
 - ii. The back of the title may be marked as a gift and signed by the donor. (2-18-02)

03. Nonresidents. ()

a. A nonresident does not owe use tax on the use of a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection, a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (2-18-02)()

b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. ()

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)

05. Military Personnel. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

06. Tax Paid to Another State. When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (7-1-93)()

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A Wyoming resident buys a vehicle there for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (4-11-06)

c. Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho. The applicant paid three percent (3%) Colorado state sales tax, one and six tenths of one percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was six and two tenths percent (6.2%). Since the Idaho tax rate is five percent (5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. (4-11-06)

d. Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. ()

de. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

ef. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

fg. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle

exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of less than ten (10) psi. (3-20-04)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

f. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. ()

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

(BREAK IN CONTINUITY OF SECTIONS)

119. SUCCESSOR'S LIABILITY (RULE 119).

01. Making Inquiries. Section 63-3628, Idaho Code, provides that when a vendor sells out his business or stock of goods, the buyer shall make inquiry of the State Tax Commission and withhold from the purchase price any amount of tax that may be due until such time as the vendor, seller, produces a receipt stating that no tax is due. If the purchaser fails to withhold from the purchase price the tax due, he becomes personally liable for the tax. (5-3-03)

02. Written Inquiry Required. The purchaser must make written inquiry to the Boise Office of the State Tax Commission setting forth the following: (5-3-03)

- a.** The name, location, and seller's permit number of the business they are purchasing. (7-1-93)
- b.** A statement that they are purchasing the business or stock of goods. (7-1-93)
- c.** An inquiry as to any sales or use tax liability of the business they are purchasing. (7-1-93)

03. Copy of Earnest Money. The purchaser must attach to the written inquiry a copy of any earnest money or similar agreement already entered into with the prospective seller. If no earnest money agreement has been entered into, then the seller must provide written authorization to the State Tax Commission to release the information to the prospective buyer. (5-3-03)

04. Written Statement from State Tax Commission. The State Tax Commission, after receiving the written inquiry from the purchaser as to the amount due, will issue a written statement to the purchaser setting forth the amount of tax due by the seller, if any. The State Tax Commission shall advise the prospective buyer only of any amount of sales or use tax that may be due to the State Tax Commission under the Sales Tax Act. The release of any other information is not authorized. In the case that the prospective buyer requests to see the prospective seller's sales or use tax filing record in order to determine if the business is profitable, the prospective seller must provide a Power of Attorney appointing the prospective buyer as attorney in fact to receive confidential information regarding sales or use tax filings on behalf of the prospective seller. (5-3-03)

05. Application for Seller's Permit Number. Upon final sale, the purchaser must file an application; ~~either~~ Form IBR-1 ~~or IBR-2~~, for a new seller's permit number with the State Tax Commission. The seller must forward his seller's permit to the State Tax Commission for cancellation. ~~(5-3-03)~~()

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0602

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) 63-105, 63-3624, 63-3635, and 63-3039.

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 18, 2006.

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:

Sales Tax Rule 027 states that the portion of the sales price of computer software maintenance agreements (agreements that include both upgrades of new software and support services) that represents upgrades or new software is subject to sales tax. The portion that represents support services is not. If the price of the upgrades is not stated separately the entire sales price is taxable. Very few software developers separately state the two charges. In many cases it is clear that a significant portion of the sales price represents nontaxable services it is difficult to estimate the percentage. This results in inequity and is an administrative burden for both the Commission and the taxpayers.

To add a provision to Rule 027 stating that 50% of the sales price is presumed to be subject to tax when services and software are not separately stated.

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

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

There would be a negative fiscal impact of \$600,000 to \$800,000 for the next fiscal year, assuming a 5% tax rate.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0602

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).

01. Hardware and Computers Defined. (3-6-00)

a. Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (3-6-00)

b. Computers are programmable machines or devices having information processing capabilities and include word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)

02. Computer Software, Storage Media and Transfer Media Defined. (3-6-00)

a. Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location. (3-6-00)

b. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, and semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)

03. Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)

04. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. (3-6-00)

a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. (3-6-00)

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error

correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (7-1-93)()

b. If the maintenance contract is optional to the purchaser of canned software, ~~then the portion of the contract fee representing upgrades or new software is subject to sales tax if the fees for support services and upgrades are separately stated. If the fees are not separately stated the entire charge for the maintenance contract is subject to sales tax.~~ (3-6-00)()

i. Then only the portion of the contract fee representing upgrades or enhancements is subject to sales tax if the fee for any maintenance agreement support services is separately stated; ()

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; ()

iii. If the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire sales price of the contract is taxable; ()

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. ()

06. Reports Compiled by a Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

07. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

08. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

09. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

IDAPA 35 - STATE TAX COMMISSION
35.01.06 - HOTEL/MOTEL ROOM TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0106-0601
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) 63-105, 63-3624, 63-3635, and 63-3039.

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 18, 2006.

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:

Rules 012 and 015: To strike references to the 4% Greater Boise Auditorium District tax rate. The rate increases to 5% on October 1, 2006. The history of changes to the Greater Boise Auditorium District tax is also being struck since that information is available elsewhere.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0106-0601

012. ~~RATE AND APPLICATION OF TAX~~ GEOGRAPHICAL BOUNDARIES (RULE 012).

~~01. **Travel and Convention Tax.** The statewide Travel and Convention tax applies to all sales of hotel or motel rooms or campground spaces to be used by an individual as a place to sleep in the state of Idaho after July 1, 1981, unless the charge for the room or campground space is exempted by provisions of law or these rules. The tax is measured by the total taxable gross receipts from the charges for all such rooms or campground spaces during any calendar month and is imposed at the rate of two percent (2%) of such receipts. (7-1-93)~~

~~02. **Auditorium District Tax.** The Auditorium District tax applies to all hotel or motel rooms located within the geographical boundaries of the Greater Boise Auditorium District furnished for a consideration, unless the charge is exempt by the provisions of law or these rules. The tax rate is set by the Auditorium District Board and is currently imposed at four percent (4%). The previous rates and dates of application are as follows: (7-1-93)~~

~~a. January 1, 1979 through June 30, 1980 = two percent (2%) (7-1-93)~~

~~b. July 1, 1980 through November 30, 1981 = five percent (5%) (7-1-93)~~

~~c. December 1, 1981 through April 30, 1987 = two percent (2%) (7-1-93)~~

~~d. May 1, 1987 to Current = four percent (4%) (7-1-93)~~

~~03. **Auditorium District Board.** Action by the Auditorium District Board affecting a change in the rate of tax supersedes provisions of these rules. (7-1-93)~~

~~04. **Geographical Boundaries.** The State Tax Commission and the Boise Auditorium District shall maintain in their respective offices an accurate map of the geographical boundaries of the auditorium district which shall be available for inspection by any person. (7-1-93)()~~

(BREAK IN CONTINUITY OF SECTIONS)

015. SEPARATE STATEMENT OF TAX (RULE 015).

01. Amount of Tax Charged. The amount of tax charged to the user or occupant of the room or campground may be charged as a rate which is a consolidation of all of the tax rates for state and local taxes which apply to the charge. The amount of tax charged ~~shall may~~ be separately stated on one line of the receipt, invoice or other document provided to the customer. ~~The rate of tax shall be as follows: The consolidated tax amount must include all applicable taxes and be separately stated from all other charges. (7-1-93)()~~

~~a. In the case of all campgrounds within the state and in the case of all hotels and motels located outside the geographical boundaries of the Greater Boise Auditorium District, the tax shall be two percent (2%) of the total gross receipts from the charges and subject to the tax rounded to the nearest penny. (7-1-93)~~

~~b. In the case of hotels and motels located within the geographical boundaries of the Greater Boise Auditorium District, the tax shall be six percent (6%) of the total gross receipts from room charges subject to the tax rounded to the nearest penny. If the charge is exempt from the Auditorium District tax but subject to the Travel and Convention tax the tax rate shall be two percent (2%) and if the charge is exempt from the Travel and Convention tax but is subject to the Auditorium District tax the tax rate shall be four percent (4%). (7-1-93)~~

~~c. When the room or campground charge is also subject to the state sales tax, the rate of that tax shall be added to the rate stated above. (7-1-93)~~

02. Fractional Parts of One Cent. If the amount of tax computed in accordance with this rule is a fractional part of one cent (\$.01), the amount shall be rounded to the nearest full cent. (7-1-93)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.09 - IDAHO KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-0601

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) 63-105 and 23-1323.

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 18, 2006.

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:

With the enactment of H.B. 454 there will be a new class of wine sellers in Idaho that are allowed to ship wine directly to consumers, effective July 1, 2006:

Rule 010: Add a definition of "wine direct shipper."

Rule 011: Amend to explicitly state that wine direct shippers are required by statute to remit wine tax and collect use tax on their sales of wine to Idaho residents.

Rule 014: Amend to clarify that wine direct shippers are required to post a surety bond or some other acceptable form of security in the same manner as in-state wineries and wine distributors.

Rule 015: Amend to state that wine direct shippers are required to obtain a wine tax reporting number in the same manner as in-state wineries and wine distributors.

Rule 016: Amend the rule to state the information required on a wine tax return.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0109-0601

010. DEFINITIONS (RULE 010).

01. Disposition. Disposition, for the purpose of these rules, shall mean any diminution, reduction, dispensation, or depletion of wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. (7-1-93)(____)

02. Wine Direct Shipper. A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. (____)

011. SALES SUBJECT TO WINE TAX (RULE 011).

01. In General. Section 23-1319, Idaho Code, imposes an excise tax per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

02. Imposition. All of the terms defined in Section 23-1303, Idaho Code, apply to the assessment of the excise taxes provided in Section 23-1319, Idaho Code. (7-1-93)

a. All wine distributors, as defined in Sections 23-1303(d) and (g), Idaho Code, and wine direct shippers as defined in Section 23-1309A, Idaho Code are required to collect and to pay the excise taxes imposed by Section 23-1319, Idaho Code. (7-1-93)(____)

b. Any vintner, winery, producer or manufacturer of wine within Idaho shall be considered a wine importer within the meaning of the definitions provided in Sections 23-1303(e) and (h), Idaho Code, for the purpose of administration of the excise tax as imposed by Section 23-1319, Idaho Code. However, to ensure payment of taxes on wine, any entity holding a winery license shall be considered a distributor to the extent of any dispositions from such winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. (7-1-93)

c. References to the Act as used in these rules, are to the County Option Kitchen and Table Wine Act, Chapter 13, Title 23, Idaho Code. (7-1-93)

d. Ales, strong ~~beer~~ beer, new beer, or any other alcoholic beverages containing a greater percentage of alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code. (7-1-93)(____)

e. Premixed cocktails having an alcoholic content of fourteen percent (14%) or less by volume shall be taxed as wine. (7-1-93)

03. Every Disposition is a Sale. Every disposition of wine by a distributor to a retailer or consumer shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and the distributor shall be liable for the payment of taxes on such sales. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code on all shipments of wine to Idaho residents. Any person making sales of dispositions of wine, whether licensed as a distributor or not, shall be liable for the taxes on such sale or disposition of wine for which no tax under the Act has otherwise been collected. (7-1-93)(____)

04. All Sales Presumed Taxable. Every sale or disposition of a distributor's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

014. SECURITY FOR TAX REQUIRED (RULE 014).

01. **Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

02. **Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-98)

03. **Security Requirement Excused.** A distributor, ~~or winery, or wine direct shipper~~ having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax ~~will~~ may not be required to furnish security. (7-1-93)()

04. **Security for a New Distributor.** When a new distributor, ~~or winery, or wine direct shipper~~ applies for a reporting permit number as required by ~~Idaho Wine Tax Administrative~~ Rule 15 of these rules, security ~~will~~ may be required. (7-1-98)()

a. If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no wine tax reporting history available from a previous ownership of the business, the new distributor, ~~or winery, or wine direct shipper~~ shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-98)()

05. **Types of Security.** A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-98)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)

06. Petition to Waive Security Deposit. Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

07. Taxpayer Petition for Release from Security Requirement. (7-1-93)

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

b. Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefore. (~~7-1-98~~)(____)

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

015. WINE TAX REPORTING PERMIT NUMBER (RULE 015).

01. Permit Number Required. Every winery located within this state, ~~and~~ every wine distributor, and every wine direct shipper is required to obtain a wine tax reporting permit number before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a wine tax number. (~~7-1-93~~)(____)

02. Permit Number Is Non-Assignable. A wine tax reporting permit number is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. (~~7-1-93~~)(____)

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's wine tax reporting permit number without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (~~7-1-93~~)(____)

016. WINE TAX RETURNS AND REPORTS (RULE 016).

01. Due Date of Reports. Every person liable for the payment of taxes on wine and every person

responsible for making reports to the State Tax Commission shall, on or before the fifteenth (15th) day of each month, file a written report with the State Tax Commission showing all sales of wine for delivery within Idaho during the immediately preceding calendar month. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (7-1-93)()

02. Weekend or Holiday Due Date. For purposes of this rule, if the fifteenth (15th) day of any month shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (7-1-93)

03. Prescribed Forms. (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms provided by the Commission. (7-1-93)

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

c. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)

d. In-state distributors, wineries, vintners, producers or manufacturers shall use Form ~~W~~-1752 and related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (7-1-93)()

e. All persons liable for wine tax must file a wine tax returns provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: ()

i. The name, address, telephone number and permit number of the taxpayer. ()

ii. Beginning and ending inventories. ()

iii. Wine purchases made during the reporting period. ()

iv. Exempt sales and transfers including sales to in-state and out-of-state wholesales and sales to military or liquor dispensaries. ()

v. Purchases and sales of wine in odd size containers. ()

vi. Spoilage. ()

vii. Total taxable gallons. ()

viii. Credits from previous periods, if any. ()

viii. Total tax due. ()

ix. Penalty and interest due, if any. ()

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and ~~rules thereunder~~ the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules." (7-1-93)()

a. All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

b. All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (~~7-1-93~~)(____)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0601

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) 63-105, 63-2501, and 63-2553.

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 18, 2006.

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:

Rule 019: Subsection 019.01 imposes the duty to pay the tobacco tax on the receiver if the receiver is both a retailer and distributor. This would conflict with Rule 021 if the shipper was also a licensed distributor. The rule is being amended to clarify that this provision applies only to shippers that are not licensed tobacco products distributors.

Rule 021: To change the phrase from "incidence of the tax" which can be misinterpreted, to "duty to pay the tax" and strike the words "report or" from subsection 21.03 to be consistent with current administrative practice.

Rule 022: To require distributors to obtain a copy of the owners tribal identification card or a certificate of tribal ownership when selling to an enrolled tribal member or an Indian tribe.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0110-0601

019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

01. Shipments to Retailers/Distributors. In the case where ~~shipments are made~~ a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and ~~subsection~~ ISTC Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. ~~(7-1-93)~~(____)

02. Nontaxed Tobacco Purchases from Outside the State. Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (7-1-93)

03. Determining Wholesale Sales Price. Any time a distributor makes a purchase of tobacco products upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

01. Sales for Eventual Resale. When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the ~~incidence of duty to pay~~ the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. ~~(4-11-06)~~(____)

02. First Receiver. The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on his tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. (4-11-06)

03. Subsequent Receiver. Any subsequent receiver will not be required to ~~report or~~ pay the tax as long as he maintains records showing that the first receiver has paid the tax. ~~(4-11-06)~~(____)

022. EXEMPTIONS (RULE 022).

01. Credit for Taxes Paid. Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are: (7-1-93)

a. Sold and delivered to retailers at locations outside the state of Idaho; (5-3-03)

b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; (7-1-93)

c. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. (7-1-93)

d. Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian

tribe he should keep a copy of the purchaser's tribal identification card in his files. If he is selling to a tribally owned entity, he should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe. ()

02. Indian Reservations. Indian reservation means lands which are: (7-1-93)

a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (7-1-93)

b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (7-1-93)

03. Non-Indian Enterprises. Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. (7-1-93)

04. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - IDAHO TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0601

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) 63-105 and 63-3039.

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 18, 2006.

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:

Rule 300: Amend Administration and Enforcement Rule 300 to remove from the title of the rule Idaho Code section 63-3044 since it is no longer applicable due to a 2006 legislative change in House Bill 443. Clarify that subsection 01 is addressing an assessment when a return is filed.

Rule 310: Idaho Code section 63-3045 establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2007.

Rule 430: Amend Administration and Enforcement Rule 430 to correct the calculation of penalties when a taxpayer qualifies for an extended due date, but files the return before such date. This is consistent with changes to Idaho Code section 63-3033 by House Bill 471, which was passed by the 2006 Legislature.

Rule 500: Amend Administration and Enforcement Rule 500 to delete the requirement that an offer of compromise include a remittance in the amount of the offer.

Rule 704: Amend Administration and Enforcement Rule 704 to add references to Idaho Code section 63-3077D to the rule with regard to exchanges of information with the Internal Revenue Service and the Financial Management Services of the U.S. Department of the Treasury. This is consistent with 2006 legislative changes in House Bill 473. Modify the title of the rule to include Idaho Code Section 63-3077D and another missing code section referenced in the rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

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 25, 2006.

DATED this 21st day of August, 2006.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-0601

300. ASSESSMENT OF TAX (RULE 300).

Sections ~~63-3044~~, 63-3045, and 63-3045A, Idaho Code.

(~~3-20-97~~)()

01. In General. When a tax return is filed, tax is and interest are assessed on the date ~~at tax~~ the return showing tax owing is ~~filed~~ received, even if the return is corrected by the Tax Commission for mathematical errors. If the taxpayer does not compute a tax on an otherwise properly filed return, any tax calculated by the Tax Commission to be owed is assessed the date payment was due.

(~~3-20-97~~)()

02. Deficiency of Tax. If the Tax Commission determines a deficiency of tax, the additional tax is assessed when the deficiency determination becomes final. A deficiency determination becomes final when the taxpayer fails to timely petition for redetermination of the deficiency or to timely appeal the decision of the Tax Commission. If the taxpayer timely appeals the decision of the Tax Commission, the deficiency determination becomes final when the decision of the Board of Tax Appeals, or the judgment of the court, becomes final and can no longer be appealed.

(3-20-97)

03. The Record of Assessment. The record of assessment shall be the Notice and Demand for payment of taxes that also functions as the required notice for the distraint and sale of a taxpayer's personal property pursuant to Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, and 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice and Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return.

(3-20-97)

04. Admission to Understatement of Tax. A taxpayer may admit to an understatement of tax at any time. An admission is not considered a compromise of tax, and does not affect the statutory period of limitations for an audit or additional assessment or for a claim for refund filed by the taxpayer.

(3-20-97)

301. -- 309. (RESERVED).

310. INTEREST RATES (RULE 310).

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

| PERIOD | RATE OF INTEREST | INTERNAL REVENUE SERVICE REVENUE RULING |
|-----------------------------------------|---------------------------|-----------------------------------------|
| July 1, 1981, through December 31, 1993 | 12% simple interest | Not Applicable |
| Calendar Year 1994 | 7% simple interest | Revenue Ruling 93-64 |
| Calendar Year 1995 | 9% simple interest | Revenue Ruling 94-61 |
| Calendar Year 1996 | 8% simple interest | Revenue Ruling 95-67 |
| Calendar Year 1997 | 9% simple interest | Revenue Ruling 96-49 |
| Calendar Year 1998 | 8% simple interest | Revenue Ruling 97-41 |
| Calendar Year 1999 | 7% simple interest | Revenue Ruling 98-50 |
| Calendar Year 2000 | 8% simple interest | Revenue Ruling 99-41 |
| Calendar Year 2001 | 8% simple interest | Revenue Ruling 2000-45 |
| Calendar Year 2002 | 7% simple interest | Revenue Ruling 2001-49 |
| Calendar Year 2003 | 5% simple interest | Revenue Ruling 2002-61 |
| Calendar Year 2004 | 6% simple interest | Revenue Ruling 2003-107 |
| Calendar Year 2005 | 6% simple interest | Revenue Ruling 2004-69 |
| Calendar Year 2006 | 6% simple interest | Revenue Ruling 2005-57 |
| <u>Calendar Year 2007</u> | <u>7% simple interest</u> | <u>Revenue Ruling 2006-44</u> |

(4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING (RULE 430).
Sections 63-3033 and 63-3046, Idaho Code. (3-15-02)

01. In General. (2-23-01)

a. As used in this rule, due date means the date prescribed for filing without regard to extensions. (2-23-01)

b. A penalty of two percent (2%) of the tax due per month may be imposed on a taxpayer who fails to meet the extension criteria provided in Section 63-3033, Idaho Code. (2-23-01)

c. A penalty of five percent (5%) of the tax due per month, may be imposed on a taxpayer who files a delinquent return or who fails to file a return as provided in Section 63-3046, Idaho Code. (2-23-01)

d. If a taxpayer files a return but does not pay the tax due, a penalty of one-half percent (0.5%) of the tax due per month may be imposed. (2-23-01)

e. The penalties computed in this subsection may not exceed twenty-five percent (25%) of the tax due. (2-23-01)

f. For purposes of computing the penalties in Subsection 430.01, tax due includes subsequent

adjustments. (2-23-01)

02. Calculations of Penalty When a Taxpayer Satisfies the Extension of Time Criteria. (2-23-01)

a. A taxpayer is entitled to an automatic extension of time for filing the Idaho income tax return if, by the due date, the taxpayer satisfies either of the following extension criteria provided in Section 63-3033, Idaho Code: (2-23-01)

i. Paying eighty percent (80%) of the total tax due on his income tax return when it is filed; or (2-23-01)

ii. Paying the total tax due on the income tax return for the prior year if one was filed. (2-23-01)

b. If the payment computed in Subsection 430.02.a. is fifty dollars (\$50) or less, a payment is not required to qualify for the extension. (3-15-02)

c. If the taxpayer satisfies the extension criteria, ~~and~~ files the return ~~and pays the tax~~ on or before the extended due date, ~~and pays the tax with the return or before filing the return,~~ no penalties apply. ~~(3-15-02)()~~

d. If the taxpayer satisfies the extension criteria and files the return on or before the extended due date, but pays the tax after ~~the extended due date~~ filing the return, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return's extended due date is filed to the date the tax is paid. For returns filed in 2006, if the return is filed before July 1, 2006, but the tax due is not paid by that date, the late payment penalty shall apply from July 1, 2006 to the date the tax is paid. ~~(2-23-01)()~~

e. If the taxpayer satisfies the extension criteria but fails to file the return and pay the tax due on or before the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the return's extended due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed until the date the tax is paid. (3-15-02)

03. Calculations of Penalty When a Taxpayer Fails to Satisfy the Extension of Time Criteria. If a taxpayer fails to satisfy the extension criteria, the following penalties may apply: (2-23-01)

a. If the return is filed by the due date, but the tax is paid after the due date, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

b. If the return is filed and the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (2-23-01)

c. If the return is filed after the extended due date but the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

d. If the return is filed after the extended due date and the tax is paid after the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the due date of the return to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (3-15-02)

04. Other Penalties. Imposing a penalty for failure to meet the extension criteria, failure to file a return timely, or failure to pay the tax due timely does not preclude the imposition of another penalty pursuant to Section 63-3046, Idaho Code. (2-23-01)

05. Insufficient Postage. The proper amount of prepaid postage is required on returns mailed to the

Tax Commission. If a tax return is returned to the sender due to insufficient postage, it may result in the return becoming delinquent and subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code. (3-20-97)

06. Month Defined. If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction of it, during which the failure to file continues constitutes a month. If the due date is not the last day of the calendar month, the period that ends with the same date of the next month constitutes a month. If the succeeding month has no corresponding date, the last day of the month is substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment constitutes a full month. (3-20-97)

431. -- 499. (RESERVED).

500. ADJUSTED OR COMPROMISED CASES -- CLOSING AGREEMENTS (RULE 500).
Sections 63-3047 and 63-3048, Idaho Code. (3-20-97)

01. Grounds for Compromise. The Tax Commission may compromise the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist: (3-20-97)

- a. Doubt as to liability; (3-20-97)
- b. Doubt as to collectibility; or (3-20-97)
- c. Extreme hardship of the taxpayer. (3-20-97)

02. Final Judgments. The Tax Commission may not compromise the tax liability if the liability has been established by a final judgment of a court, and no doubt exists as to the taxpayer's ability to pay or the state's ability to collect the amounts owing. (3-20-97)

03. Agreement Final. A compromise agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. (3-20-97)

04. Form of Compromise. The taxpayer must submit an offer of compromise in writing ~~and include a remittance in the amount of the offer.~~ An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. ~~(3-20-97)(_____)~~

05. Withdrawal of Offer. A taxpayer may withdraw his offer in compromise at any time prior to its acceptance by the Tax Commission. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).
Sections 39-8405, 50-1049, 54-1904A, ~~56-231~~, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, ~~63-3077D~~, 63-3634A, and 67-4917C, Idaho Code. ~~(4-11-06)(_____)~~

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

- 02. Government Agencies or Officials.** The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)
- 03. Exchange of Information.** Information may be exchanged between the Tax Commission and: (4-5-00)
- a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; ~~(5-3-03)~~(____)
 - b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - c.** County assessors, limited to: (3-20-04)
 - i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
 - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
 - d.** Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
 - e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
 - f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - g.** Idaho Transportation Department, relating to: (3-20-04)
 - i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
 - ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
 - h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; ~~(5-3-03)~~(____)
 - i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
 - j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
 - k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
 - l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
 - m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
 - n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
 - o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.22 - RULES GOVERNING MILEAGE USE FEE ADMINISTRATION
DOCKET NO. 39-0222-0601 (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 rule-making procedures. The action is authorized pursuant to Section(s) 49-201, 49-434, and 49-439, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

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 entire rule has been reorganized and updated to recognize the new method of fee payments, based on registration and permit fees, per Senate Bill 1580, 2000. Changes also address quarterly reporting requirements, installment payments, refunds, delinquent or non-payment of fees, suspension or revocation of a customer account and methods of payment.

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

Late penalty fee of 10% plus 1% per month for failure to pay installment payment on Commercial Vehicle Registration by due date, and \$40 fee to reinstate suspended payment plan account or reinstate customer account for non-payment authorized per Section 49-439(7), Idaho Code. \$20 fee for insufficient fund check authorized per Section 28-22-105, Idaho Code.

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

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because changes reflect current standards and criteria in Idaho Code regarding the administration of motor carrier registration and permits, per Senate Bill 1580, 2000.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Frew, Motor Vehicle Division, 334-8809.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 23rd day of August, 2006.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129
Boise ID 83707-1129
Phone - 208-334-8810
FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0222-0601

39.02.22 - RULES GOVERNING ~~MILEAGE USE~~ REGISTRATION
AND PERMIT FEE ADMINISTRATION

000. LEGAL AUTHORITY.

This rule is adopted under authority of Sections 49-201, 49-434, ~~49-436~~, and 49-439, Idaho Code. (~~11-1-94~~)()

001. TITLE AND SCOPE.

This rule clarifies the procedure for administering the mileage use fee. (11-20-91)

01. Title. This rule shall be cited as IDAPA 39, Title 02, Chapter 22, "Rules Governing Registration and Permit Fee Administration." ()

02. Scope. This rule clarifies the procedures for administering registration and permit fees. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8611. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

~~007.~~ -- 009. (RESERVED).

010. DEFINITIONS.

~~01. Carrier Type.~~ There are two (2) types of carriers; commercial carriers and special commodity carriers as specified in Section 49-434(4) and (5), Idaho Code. (11-1-94)

021. Combination of Vehicles. A tractor or truck tractor and one (1) or more trailers and/or semitrailers. (11-20-91)

02. Customer. The individual or entity that is registering/permitting the vehicle. The following terms; customer, individual, company or registrant are interchangeable in this rule. ()

~~03. **Declared Combined Gross Vehicle Weight.** The total unladen weight of any combination of vehicles plus the maximum load to be carried on that combination of vehicles as declared by the owner in making application for registration. **Insufficient Funds (ISF).** ISF will be the abbreviation as it pertains to checks written on personal and/or business checking accounts without sufficient funds to cover the check, for payment to the department.~~ (11-1-94)(____)

~~04. **Full Trailer.** A vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle. **Non-Reducible Load.** Defined in IDAPA 39.03.01, "Rules Governing Definitions," Subsection 010.31.~~ (11-20-91)(____)

~~05. **Mileage Rate.** The mills per mile expressed in cents, used to calculate the amount of use fee due for every mile traveled on Idaho highways.~~ (11-20-91)

~~06. **Owner.** The carrier company or lessee who has at least one (1) vehicle registered pursuant to Section 49-434, Idaho Code, and is authorized to operate a taxable vehicle on Idaho highways.~~ (11-1-94)

~~075. **Probable Cause.** Information sufficient to create a reasonable belief that the owner registrant of a motor vehicle(s) has either not paid fees due or has under reported miles traveled or has underpaid fees due.~~ (11-1-94)(____)

~~086. **Quarterly Report.** The report form for owners registrants to report the laden miles traveled on Idaho highways during the preceding three (3) months when transporting non-reducible vehicles/loads under annual overweight/oversize permits.~~ (11-1-94)(____)

~~097. **Revocation of Registration.** The termination of an owner's registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the Department and Idaho Code.~~ (11-1-94)(____)

~~08. **Registrant.** A person, firm, or corporation in whose name a vehicle or vehicles are registered, with an Idaho account number assigned by the department.~~ (____)

~~09. **Road Use Fee.** The fee per mile paid for non-reducible vehicles or combinations of vehicles hauling non-reducible loads. The fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight, in addition to the registration fee.~~ (____)

~~10. **Semitrailer.** A vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.~~ (11-20-91)

~~110. **Suspension of Registration.** The temporary withdrawal of an owner's registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the department and Idaho Code.~~ (11-1-94)(____)

~~11. **Third-Party Checks.** Checks payable to one entity, and endorsed over to another entity for payment.~~ ()

~~12. **Tractor.** A motor vehicle designed and used primarily for drawing other vehicles but not so constructed as to carry a load other than part of the weight of the vehicle and load so drawn.~~ (11-20-91)

~~13. **Travel Authorization.** An authorization issued by a Port of Entry for which a fifty dollar (\$50) fee is charged to move an overweight load not exceeding fifteen percent (15%) over maximum axle or axle group weights which cannot be safely legalized at the place of weighing to the nearest place where the load can be safely adjusted. Refer to Sections 49-436(2)(e) and 49-1001(8)(b), Idaho Code.~~ (11-1-94)

~~14. **Truck Tractor.** A motor vehicle designed and used primarily for drawing other vehicles but so constructed as to carry a load other than the vehicle and load so drawn.~~ (11-20-91)

~~15. **Vehicle Configuration.** The actual number of vehicles in the combination of vehicles or, for single trailer combinations, the size of the trailer and/or the number of axles on the trailer. No vehicle can have more than one (1) declared weight.~~ (11-20-91)

011. -- 099. (RESERVED).

100. MILEAGE QUARTERLY ROAD USE FEE REPORTINGS FOR ANNUAL OVERWEIGHT PERMITS.

~~Each owner who declares a maximum gross weight of sixty-two thousand (62,000) pounds or more, will receive a quarterly reporting form representing the maximum gross weight declared by the owner. The owner is then required to report all miles of travel on Idaho highways and pay at the fee rate established for the maximum gross weight, declared by the owner. The owner is further required to maintain records to support and justify all miles of travel as provided for in Sections 800, 801, or 805 of this rule. To comply with Section 49-1001, Idaho Code, the customer will make quarterly reports of laden only mileage to the department for the movements of non-reducible vehicle/loads, at the appropriate permitted weight level of the annual overweight/oversize permits. These fees are in addition to the registration fees otherwise required to be paid to the department. Mileage for single trip overweight/oversize permits is determined and collected at the time of issuance.~~ (11-1-94)(____)

101. QUARTERLY ROAD USE FEE REPORTING PROCEDURE.

01. Quarterly Reporting Forms Issued. The department will issue a quarterly report form to ~~owners~~ customers for each ~~registered carrier type and weight of sixty-two thousand (62,000) pounds maximum gross weight or more~~ valid annual overweight/oversize permit issued to them. (11-1-94)(____)

02. Use of Quarterly Reporting Form. The ~~owner~~ customer is required to report each quarter's information on the form provided before the due date specified on the quarterly report form. (11-1-94)(____)

a. If the ~~owner~~ customer does not receive a quarterly report form, it is the ~~owner's~~ customer's responsibility to notify the department allowing adequate time to submit the report before the due date. (11-1-94)(____)

b. Any report transmitted through the ~~United States mail~~ US Postal Service shall be considered filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or wrapper containing the report. A postage meter cancellation shall not be considered as a post office cancellation mark. (11-20-91)(____)

c. If the quarterly report form due date falls on a Saturday, Sunday or legal holiday, the due date will be extended to the next business day. In the event the department is late mailing the quarterly report form the due date shall be adjusted by the department. (11-1-94)

03. Information Required on the Quarterly Report Form. ~~Owners~~ Customers must report the following: (11-1-94)(____)

a. The number of ~~laden miles traveled on Idaho highways~~ laden miles traveled on Idaho highways for ~~each declared combined gross vehicle weight class traveled on Idaho highways~~ the appropriate weight category for the quarter specified on the quarterly report form, rounded to the next full mile; and the ~~mileage road use fee due for each weight class~~; and penalty, if the report is filed after the due date. (11-1-94)(____)

b. Total amount due. (11-20-91)

c. Signature, and title of company official, and date of report. All reports filed with the department must be signed by an authorized representative of the ~~owner~~ company/individual in order to be considered a valid report. (11-1-94)(____)

d. Address change, if different from quarterly report form. (11-20-91)

e. ~~Company Customer~~ telephone number (11-20-91)()

102. -- 199. (RESERVED).

~~200. REQUEST FOR PENALTY WAIVER.~~

~~01. **Penalty Waiver Request.** An owner may submit a penalty waiver request in letter form to the Motor Vehicle Accounting Manager, P.O. Box 34, Boise, Idaho 83731-1129. (11-1-94)~~

~~02. **Penalty Waiver Request Due Date.** A penalty waiver request must be received by the Department within thirty (30) days after the quarterly reporting due dates established by Section 49-436, Idaho Code, or within fifteen (15) days after receiving a billing due date notification. (11-20-91)~~

~~03. **Penalty Waiver Conditions.** A request for penalty waiver will be considered when the following conditions exist and can be verified by the owner to the satisfaction of the Department: (11-1-94)~~

~~a. Accounting records are unavailable due to an unforeseen occurrence beyond the control of the owner such as flood, fire or crime. (11-1-94)~~

~~b. A change in the business structure of the entity or other condition which prevents records from being current for reporting purposes. (11-20-91)~~

~~04. **Other Fees Due.** All other fees due, except the penalty in question, must be paid in full by the billing due date. The waiver applies to the penalty only. (11-20-91)~~

200. INSTALLMENT PAYMENTS FOR COMMERCIAL VEHICLE REGISTRATION.

The department offers a Payment Plan for registrants in compliance with Sections 49-434, Idaho Code. ()

01. Requirements to Participate in Installment Payments. ()

a. Participant must sign participation contract agreement. ()

b. Only Full Fee and Idaho IRP registration fees are included in the payment plan. Other jurisdictions' IRP fees shall not be included. ()

c. Only full annual registration fees shall be included in payment plan. Registrations for less than one full year shall not be included. ()

d. Vehicles not registered within thirty (30) days after the previous year registration has expired shall not be eligible for the installment payment option. ()

e. Installment contract requirements do not provide opportunity for registrant to opt out of any remaining installment payments. The balance of the payment plan shall continue to be paid even if the truck is not being operated. ()

f. If registrant sells vehicle or otherwise disposes of vehicle, and the applicant provides proof of sale, upon returning the license plate, registration certificate, and validation sticker, the prorated portion of the Idaho fee shall be credited toward the installment plan or refunded if the plan has been paid in full. ()

g. Registrant shall not participate in installment payment plan if the registrant's account has previously been suspended due to non-payment of previous payment plan. ()

h. The contract shall stipulate the payment periods and the installment confirmation letter shall stipulate the due dates of each subsequent payment. ()

02. Billings, Payments and Due Dates of Installment Plan. ()

a. The department shall upon acceptance of the contract by the registrant, receive one-quarter of the annual registration payment, and then shall bill the registrant for three (3) equal installments based upon the previously set payment periods outlined in the contract, which are the third, sixth, and ninth months after the effective date of the registration. ()

b. All installment payments are due no later than the last day of the month in which the billing is due. ()

c. US Postal Service postmark shall be used to determine if payment is received on time. If the envelope is postmarked on or before the last day of the month, the payment shall be considered "on time". ()

d. If the last day of the month falls on a Saturday, Sunday or legal holiday, the next business day shall be considered the due date. ()

e. Non receipt of the department's billing notice does not relieve the burden of the registrant to pay the installment amount by the due date. ()

03. Failure to Pay Installment Payment by Due Date. ()

a. The department shall send out courtesy pre-suspension notices to registrants who have failed to remit payment by the due date printed on the quarterly billing. ()

b. The pre-suspension letter shall contain a late penalty fee of ten percent (10%) of the amount due and an additional one percent (1%) for each month or portion of a month that the payment is past due. ()

c. Registrant shall pay installment amount portion that is due, plus assessed penalties and interest. ()

04. Suspension of Registrant's Account Due to Non-Payment of Payment Plan. Approximately two (2) weeks after pre-suspension notices are mailed to the registrant, the department shall suspend accounts of registrant's that have failed to remit installment payment and/or interest and penalty. ()

05. Reinstatement Fee for Payment Plan Registration. ()

a. A forty dollar (\$40) reinstatement fee shall be applied to all payment plan accounts that have been suspended. ()

b. Registrant must pay quarterly payment portion, penalty and interest, if applicable, and reinstatement fee before suspension shall be cleared from account. ()

06. Repetitive Suspensions Result. After accounts of registrant's have been suspended for delinquent installment payments two (2) or more times in one (1) payment plan year, the registrant shall not be allowed to participate in future payment plan programs. ()

201. -- 299. (RESERVED).

Section 300 has been Renumbered and Moved to Section 700

300. REFUNDS.

01. Fees Eligible for Refund. ()

a. Commercial vehicle registration is eligible for refund when the criteria in Section 49-434, Idaho Code, are met. ()

- b.** If account has been overpaid, and no other fees are owed to the department. ()
- c.** Unexpired portion of Idaho based fees are refundable for: ()
 - i.** A vehicle that has been sold; ()
 - ii.** A vehicle that has been damaged beyond repair; or ()
 - iii.** A vehicle on which the lease has been terminated. ()
- 02. Fees Not Eligible for Refunds:** ()
 - a.** Other jurisdiction's fees are not refundable by Idaho. ()
 - b.** Temporary trip permits are issued for specific vehicles only and fees are not refundable, nor transferable to other vehicles. ()
- 03. Request for Refunds:** ()
 - a.** Registrant can make a request for refund of fees from the department. The refund request must include: ()
 - i.** Proof of sale of the vehicle; ()
 - ii.** Proof from the insurance company or law enforcement agency that the vehicle has been damaged beyond repair; or ()
 - iii.** Proof of lease termination from the leasing company. ()
 - b.** Request shall be subject to audit as provided in Idaho Code. ()
 - c.** All refund requests shall be reviewed by a Commercial Vehicle Services supervisor to ensure that all requests are valid and eligible. The Revenue Operations supervisor shall also approve/disapprove refunds. If the refund amount is greater than or equal to one thousand (\$1,000) dollars, a Financial Services manager shall also review and approve/disapprove the request before refund is processed. ()
 - d.** Approval/disapproval shall be indicated by either signature, or electronic approval by means of the department's financial management system. ()

Sections 301 and 302 have been Renumbered to Sections 701 and 702

~~303~~1. -- 399. (RESERVED).

Section 400 has been Renumbered and Moved to Section 800

400. DELINQUENT BILLS FOR NONPAYMENT OF OVERLEGAL PERMITS.

01. Payment Options. A customer may request overlegal permits to be issued without prepayment. The customer may pay when he picks up the permit at the nearest Port-of-Entry or at the department. ()

02. Non-Payment of Overlegal Permits. If the customer fails to pick up the permit, the permit fee is still due and not dependent upon receipt of the permit, unless customer has requested to cancel the permit prior to the

valid date of the permit. ()

a. The department will send a billing notice to the customer requesting payment. The amount is due within fifteen (15) days of the date of the notice. ()

b. The customer's account will be suspended thirty (30) days after the original billing for non-payment of fees. If the account is suspended, it will be subject to a reinstatement fee of forty dollars (\$40). ()

c. A demand notice will be sent out thirty (30) days after account has been suspended with all the fees due, including original permit amount, and reinstatement fee. ()

d. The customer account will remain suspended if fees are uncollected. After sixty (60) days from the date of suspension, the account will be assigned to a collection agency. ()

401. -- 499. (RESERVED).

Section 500 has been Renumbered and Moved to Section 900

500. NON-PAYMENT OF FEE ACCOUNT BILLINGS FOR OVERLEGAL PERMITS.

01. Fee Accounts. A customer may opt to have a fee account with the department for convenience of ordering overlegal permits. A fee account may be established by the department for the customer provided that the customer: ()

a. Is not suspended or in revoked status. ()

b. Pays a cash bond or provides a surety bond. The bond shall be equal to the value of permits required for any consecutive three-month period, except that no bond shall be less than one thousand (\$1,000) dollars. ()

01. Charging. A customer may "charge" over-legal permits to their fee account. ()

02. Billing Notice. The department will send a billing notice to the customer on or about the first of each month. The amount is due within fifteen (15) days of the date of the notice. ()

03. Suspension. The department will suspend customer account(s) thirty (30) days after the original billing notice date if the account is not paid in full. ()

04. Second Notice. The department will send a demand letter for payment to the customer approximately thirty (30) days after the account has been suspended. ()

05. Collections. When the department determines the amount is uncollectible, the account will be assigned to a collection agency. ()

501. -- 599. (RESERVED).

~~600. AUDIT AND INSPECTION OF RECORDS AND ACCOUNTS.~~

~~01. Who Is Subject to Audit.~~ ~~Owners of commercial and farm vehicles registered under Section 49-434, Idaho Code, are subject to audit to determine if the proper schedule of mileage use fees and/or registration fees is being used.~~ (11-1-94)

~~02. Availability of Records.~~ ~~An owner must produce and make available for audit and examination at any reasonable time, the records, accounts, papers, reports and other documents under the owner's control. Examples of records are shown in Sections 800, 801, and 805.~~ (11-1-94)

~~03. **Unavailable Records.** If the owner does not have required records for audit, thirty (30) days will be given to make such records available. If records are not made available after thirty (30) days, the owner's registrations will be suspended and/or a finding made based upon an estimation of the operation. The records shall be made available at a location agreed upon between the owner and the department. (8-4-95)~~

~~04. **Location of Audit.** Audit of required records will normally be conducted at the owner's place of business. The owner is expected to provide adequate working space and conditions for the audit staff. If the owner is unable to do so, the records may be presented at a designated place. This may be done at the request of the Department or the owner. (11-1-94)~~

600. INSUFFICIENT FUNDS.

Insufficient Funds will be indicated by the abbreviation ISF. ()

01. **Payment With Insufficient Fund Check.** If a customer pays a fee prescribed by law, and the check is returned to the department as ISF, the transaction will be cancelled because the fee has not been paid. ()

02. **Pay the Original Transaction Fees.** The department will attempt to contact the customer, and allow him to pay the original transaction fees, along with the twenty dollar (\$20) fee. ()

03. **Collection.** The department will assign all ISF checks including a twenty dollar (\$20) fee to a credit agency for collection. ()

04. **No Further Transactions.** The department will not complete further transactions with the customer until the customer has paid the amount of the ISF check along with the twenty dollar (\$20) ISF fee. ()

05. **Department Reserves the Right to Not Accept Checks.** The department reserves the right to not accept checks from a customer who has written two or more ISF checks within four (4) years to the department. That customer will have to pay with cash, or verifiable check, or credit card. ()

~~**601. AUDIT SELECTION, ASSIGNMENT, AND INVENTORY.**~~

~~01. **Audit Period.** An owner of motor vehicles subject to fees pursuant to Title 49, Chapter 4, Idaho Code, shall not be selected for an audit more than once every five (5) years unless probable cause as defined by this rule exists. (11-1-94)~~

~~02. **New Owners.** When audit scheduling permits, new owners and new operations will be scheduled for an audit within the first two (2) years after the beginning of their operation. (11-1-94)~~

~~03. **Audit Selection.** Under the regular five (5) year audit cycle, the Department will select owners for an audit based upon an equitable mix of large, medium, and small operations together with a mixture of different industries; one-half (1/2) of the audits will be based upon the probability of recovery of unreported and unpaid mileage use fees. The other one-half (1/2) will be selected on a random basis. The selection criteria may include but is not limited to comparison of quarterly reporting pattern, comparison of fuel mileage reporting to mileage use fee reporting, comparison of International Registration Plan (IRP) miles to mileage use fee miles, and observation reports. (8-4-95)~~

~~04. **Probable Cause.** If the Audit Supervisor or Motor Vehicle Accounting Manager believes that probable cause exists to audit an owner more than once in five (5) years in less than five (5) years, a written statement of facts will be prepared. The statement of facts shall include all pertinent information to support probable cause. The statement of facts shall be presented to the Registration Services Manager for review. The Registration Services Manager shall either approve or disapprove based on the statement of facts. If approved the statement of facts shall be forwarded to the Legal Section for review. If the statement of facts supports probable cause, the Chief Legal Counsel shall show agreement and return a signed copy to the Registration Services Manager. If probable cause is insufficient, the reasons why must be provided to the Registration Services Manager. The Registration Services Manager shall disapprove the request and set the proposed audit aside unless additional facts are available~~

~~which will satisfy the Chief Legal Counsel's concerns. If an owner contests a probable cause finding in the District Court pursuant to Section 49-439, Idaho Code, the audit will be stayed until the court finds probable cause for an audit or the department and owner reach an agreement.~~ (8-4-95)

~~**05. Audit Assignment and Inventory.** Audit assignments shall be made by the Audit Supervisor or Audit Team Leader. (11-1-94)~~

~~**a.** Owners will not be audited by the Auditor who did the immediately preceding audit of that owner. (11-1-94)~~

~~**b.** An inventory of completed audits will be maintained by date of completion to ensure that an owner is not audited more than once in a five (5) years unless probable cause exists to do so. (11-1-94)~~

601. ACCEPTANCE OF CHECKS.

The department will accept personal checks as form of payment with sufficient proof of identification. If check payment is received by mail, the check will be accepted unless the customer has written two (2) or more ISF checks within four (4) years to the department, per Subsection 600.05 of this rule. ()

~~**602. SCOPE OF AUDITS.**~~

~~**01. Purpose of Audit.** Audits will be conducted to verify the accuracy of reported miles traveled within the state of Idaho and amount of the use fee paid. (11-20-91)~~

~~**02. Determination of Gross Weight.** Audits will include determination of maximum gross weights at which an owner is operating. If the owner has vehicles registered for a maximum gross weight less than allowable by Section 49-1001, Idaho Code, for the vehicle configuration being operated. If it is determined that the owner is operating at a gross weight in excess of the vehicle's registered gross weight, a finding will be made based on the mill rate for the higher gross weight. (11-1-94)~~

~~**602. CREDIT CARD PAYMENTS.**~~

The department will accept only Visa or Mastercard payments that do not exceed ten thousand (\$10,000) dollars for any fees due to or purchases from the department. ()

~~**603. ESTIMATED FINDING.**~~

~~If the Department makes an estimated finding of the operation due to lack of records any available information relevant to the audit may be used to make the estimate. The information used may include but is not limited to fuel purchase and fuel reporting records, International Registration Plan (IRP) applications, observation reports, records of past mileage use fees reporting and reports of companies similar in size and operation. (11-1-94)~~

~~**604. AUDIT PENALTIES.**~~

~~Penalties on additional use fees found to be due as a result of audit will be charged in accordance with Section 49-436(7), Idaho Code. When an estimated finding is made the penalty shall be in accordance with Section 49-436(6), Idaho Code. (11-1-94)~~

~~**605. PAYMENT OF AUDIT FINDING.**~~

~~The owner will be billed by the Department for audit finding. Payment must be made within thirty (30) days of the billing date of the audit summary unless prior arrangements have been made. (11-1-94)~~

~~**606. WAIVER OF AUDIT ASSESSMENT PENALTIES.**~~

~~**01. Penalty Waiver Request.** Request for penalty waiver as a result of an audit finding must be addressed to the Registration Services Manager, P.O. Box 34, Boise, Idaho 83731-1129. The penalty waiver request must be submitted within thirty (30) days after the audit billing. The request must clearly specify the reason why the owner feels the waiver should be approved. If the owner is appealing the audit in accordance with Subsection 700.02, the penalty waiver request must be included in the appeal request. (11-1-94)~~

~~**02. Penalty Waiver Actions.** The Registration Services Manager may take one (1) of the following~~

~~actions on penalty waivers:~~ (11-20-91)

~~a. On the first audit the Registration Services Manager may waive the penalty when requested by the owner unless the audit file shows intent to understate and/or underpay the tax due. (11-1-94)~~

~~b. On a second or subsequent audit the Registration Services Manager may assess the full penalty for good cause shown, assess the one percent (1%) interest portion only for good cause shown, or if the Registration Services Manager finds that the owner is taking the necessary steps to correct the deficiencies found, he may hold the penalty in abeyance pending the next audit. If the penalty is held in abeyance, the Registration Services Manager shall initiate an agreement between the Department and the owner specifying the deficiencies found on the current audit. The agreement shall state that if the deficiencies of the current audit are not found, on the next audit the penalty held in abeyance will be formally waived. If the same deficiencies are found, the penalty held in abeyance shall be assessed along with any other unpaid fees and penalties found to be due. (11-1-94)~~

~~c. As a condition of a penalty waiver, the owner and the department may initiate a written agreement stipulating that probable cause exists to conduct a follow-up audit in less than the five (5) years as specified in Section 49-439, Idaho Code. (8-4-95)~~

~~6073. -- 699. (RESERVED).~~

~~700. APPEAL PROCESS.~~

~~01. Who Can File. Any owner whose account is audited for compliance with Sections 49-434, and 49-436, Idaho Code, and against whom a finding is made, may file an appeal with the Department. (11-1-94)~~

~~02. Method of Filing. The notice of appeal must be in writing, signed by the owner or his representative, and addressed to the Registration Services Manager, P.O. Box 7129, Boise, Idaho 83707-1129. The appeal must be postmarked within thirty (30) days of the date the audit summary is given to the owner. (11-1-94)~~

~~03. Information Required. The notice of appeal must clearly specify the following: (11-20-91)~~

~~a. The years or quarters of years that are in dispute. (11-20-91)~~

~~b. The grounds or reasons why the owner feels that the finding is in error. (11-1-94)~~

~~c. Whether or not the owner wishes to have an informal conference. (11-1-94)~~

~~04. Scheduling of Informal Conference. Upon receipt of a notice of appeal the Registration Services Manager shall schedule an informal conference between the owner and a representative of the Department unless the owner has requested that the informal conference be waived. The informal conference must be conducted within twenty (20) days from the date of receipt of the notice of appeal from the owner. If the owner waives the informal conference, the Registration Services Manager shall refer the appeal to the Chief of the Motor Vehicle Bureau for appointment of a hearing officer. (11-1-94)~~

~~05. Informal Conference Attendance. Attendance at, and participation in, the informal conference is at the option of the owner. The owner and the representative of the Department shall reduce to writing all conclusions, agreements and decisions as a result of the informal conference. The written report of the results of the informal conference shall be provided to the owner within ten (10) days of the informal conference. The written report shall inform the owner of his right to appeal further pursuant to these rules. (11-1-94)~~

~~06. Contested Case Hearing. If the owner is not satisfied with the results of the informal conference, the owner may request a contested case hearing by informing the Chief of Motor Vehicles, in writing, within fifteen (15) days from the date of receipt of the results of the informal conference. All requests for contested case hearings shall be addressed to:~~

~~Chief of Motor Vehicles
Idaho Transportation Department~~

P. O. Box 7129

Boise, Idaho 83707-1129

(11-1-94)

~~07. **Hearing Officer.** The Chief of the Motor Vehicle Bureau shall appoint a hearing officer to conduct a contested case hearing in accordance with Chapter 52, Title 67, Idaho Code. A notice of hearing shall be mailed to the carrier, giving the carrier at least twenty (20) days advance notice of the hearing.~~ (11-20-91)

~~08. **Witnesses and Evidence.** Upon proper application by either party, the hearing officer may subpoena witnesses and require the production of documents and other evidence.~~ (11-20-91)

~~09. **Rules of Evidence.** The Idaho Rules of Administrative Procedure of the Attorney General shall apply to all hearings. The hearing officer, in his discretion, shall determine the order of presentation at the hearing.~~ (11-1-94)

~~10. **Preparation and Distribution of Findings.** The hearing officer shall prepare written Findings of Fact, Conclusions of Law and Preliminary Order for the agency's presiding officer. Upon receipt of the Findings of Fact, Conclusions of Law, and Preliminary Order the agency's presiding officer shall in accordance with the Idaho Rules of Administrative Procedure of the Attorney General issue a Final Order affirming, modifying or reversing the original finding. Upon issuance of the Final Order, the agency's presiding officer or his authorized designee shall mail a copy of the Findings of Fact, Conclusions of Law and Final Order to the owner by registered mail, return receipt requested.~~ (11-1-94)

3700. SUSPENSION OF REGISTRATION.

The department shall suspend ~~a~~ the vehicle registration(s) by notifying the owner registrant in writing sent via first class pre-paid mail to the owner's registrant's last known address if: (11-1-94)(____)

01. Failure to Comply. The owner registrant fails to comply with a billing letter requesting payment of fees and penalties. (11-1-94)(____)

02. Non-Filing by the Owner Registrant. The owner registrant does not file mileage quarterly reports or make installment payments to the department. (11-1-94)(____)

~~03. **Failure to Provide Records.** The owner fails to furnish requested records and/or documents to substantiate specified quarterly use fee reports.~~ (11-1-94)

3701. REVOCATION OF REGISTRATION.

The department shall revoke ~~a~~ the vehicle registration(s) if the owner registrant fails to comply with a suspension notice within fifteen (15) days of receipt of the notice, ~~or does not file an appeal pursuant to Section 49-436, Idaho Code.~~ (11-1-94)(____)

3702. REQUIREMENTS FOR REINSTATEMENT OF ~~SUSPENDED~~ REVOKED OR REVOKED SUSPENDED VEHICLE REGISTRATION.

01. Re-Register vocation. In the case of a revocation, ~~a~~ owner registrant must ~~re-register all vehicles,~~ pay all fees due, and a forty dollar (\$40) reinstatement fee to be reinstated. (11-1-94)(____)

02. Account Status Suspension. In the case of a suspension all fees, reports, and records required prior to the suspension must be provided to the department, including a forty dollars (\$40) reinstatement fee to be reinstated. (11-1-94)(____)

~~7013.~~ -- 799. (RESERVED).

~~800. MAINTENANCE OF RECORDS FOR OWNERS ENGAGED IN INTERSTATE TRAVEL.~~

~~Section 49-436(2), Idaho Code, provides that every owner whose use fees are computed under Section 49-434, Idaho Code, shall maintain records and purchase documents to substantiate and justify use of such schedule.~~ (11-1-94)

~~01. **Vehicles Registered for Declared Gross Weight Less Than Allowed.** Owners with vehicles~~

~~registered for a declared gross weight less than allowed under Section 49-1001, Idaho Code, must maintain and provide for audit purposes records to verify the gross weight hauled and the miles of travel. (11-1-94)~~

~~**02. Vehicles Registered for Declared Gross Weight Equal to or Exceeding That Allowed.** Owners with vehicles registered at a declared gross weight that is equal to or exceeds the weight allowable under Section 49-1001, Idaho Code, for the configuration being operated must maintain and provide for audit purposes records to verify miles of travel. (11-1-94)~~

~~**03. Additional Requirements.** In addition to the requirements of Subsection 800.01 or 800.02 owners who operate under the provisions of Section 49-434(5), Idaho Code, must also maintain and provide for audit records of the product being hauled. If records of product hauled are not maintained and provided for audit all miles of travel shall be increased using the mill rate schedule in Section 49-434(4), Idaho Code. (11-1-94)~~

~~**04. Acceptable Source Documents.** An acceptable source document for verification of mileage and identification of the commodities being hauled if the owner is registered as a special commodity hauler is some type of Individual Vehicle Mileage Record (IVMR). IVMRs shall contain the following basic information: (11-1-94)~~

- ~~a. Date of trip (starting and ending). (11-20-91)~~
- ~~b. Trip origin and destination. (11-20-91)~~
- ~~c. Route of travel including pick up and delivery locations. (11-20-91)~~
- ~~d. Total trip miles. (11-20-91)~~
- ~~e. Mileage by state. (All Idaho miles are taxable except for miles traveled on roads maintained with private funds. All miles traveled on state highways, county and highway district highways, and city highways are taxable). (8-4-95)~~
- ~~f. Unit number. (11-20-91)~~
- ~~g. Vehicle fleet number, if any. (11-20-91)~~
- ~~h. Registrant's name. (11-20-91)~~
- ~~i. Trailer number. (11-20-91)~~
- ~~j. Gross weight carried if registered for a gross weight less than allowable under Section 49-1001, Idaho Code, for the configuration being operated. (11-1-94)~~
- ~~k. Driver's name. (11-20-91)~~
- ~~l. Commodities being hauled if registered as a special commodity hauler. (11-1-94)~~

~~**05. Computer Printouts.** Computer printouts are merely recaps and are not acceptable at face value. Computer printouts must be supported by IVMRs as verification of mileage traveled. (11-1-94)~~

~~**06. Individual Vehicle Mileage Records (IVMRs).** Information recorded on IVMRs must be accurate and legible. Mileage figures entered on IVMRs can be obtained from various sources such as odometer and/or hubometer readings, as long as the method used is consistent. Recordings of actual mileage must include all movement of the vehicle including loaded, empty and bobtail miles. (11-1-94)~~

~~**07. Monthly and Quarterly Summaries.** Individual trips should be accumulated into monthly and quarterly summaries. These summaries should be used as the basis for the miles submitted on the quarterly reports. (11-1-94)~~

~~**08. Fuel Purchase Records.** Records of fuel purchased which show date, place of purchase and~~

~~quantity of fuel purchased must be maintained. (11-1-94)~~

~~09. **Gross Weight Documents.** Scale tickets, freight bills, or bills of lading or other documents which show gross weight and product being hauled must be maintained. (11-1-94)~~

4800. ENFORCEMENT.

01. Delayed Movement. If the registration of an owner's vehicle is suspended ~~and the owner has not filed an appeal within the time limit specified in Subsection 500.01,~~ the Ports of Entry shall delay movement of the vehicle until such time as the owner registrant complies with the condition(s) that caused the suspension. (11-1-94)()

02. Revoked Registrations. If an owner's registrant's registrations are revoked for failure to respond to a suspension notice, the motor vehicle cannot be operated on Idaho highways until the owner registrant complies with Section 3702 of this rule. Owners Registrants with suspended or revoked registrations are not allowed eligible to purchase trip permits. (11-1-94)()

~~**801. MAINTENANCE OF RECORDS FOR OWNERS ENGAGED IN INTRASTATE TRAVEL.**~~

~~Due to the operational diversity of owners engaged in intrastate travel, one (1) standard record keeping system would not be suitable for all types of operations. For a record keeping system to be acceptable it must contain at a minimum the following: (11-1-94)~~

~~**01. Trip Logs.** Daily trip sheets or trip logs. These should show date, origin, destination and number of miles per trip. (11-20-91)~~

~~**02. Log Documents.** Daily trip sheets or trip logs must be supported by load tickets, invoices, or other original source documents which can be used as verification of miles traveled. (11-20-91)~~

~~**03. Weight Documentation.** Scale tickets, freight bills, invoices, or other documents which show the product being transported if registered as a special commodity hauler. (11-1-94)~~

~~**04. Maintenance of Documentation.** Documents which show gross weight hauled must be maintained if the vehicles are registered for a gross weight less than allowable under Section 49-1001, Idaho Code, for the configuration being operated. (11-1-94)~~

~~**05. Fuel Documentation.** Records of fuel purchases. These shall be supported by invoices which show date, location, quantity and type of fuel. Records of fuel purchases shall denote usage per each vehicle. (11-20-91)~~

~~**06. Mileage Document.** Speedometer, odometer, hubometer readings by themselves are not acceptable records. Where this method is used, the miles traveled must be verifiable by another source, i.e., trip tickets, fuel purchases, daily logs, etc. (11-20-91)~~

~~**07. Miles Per Gallon Documentation.** If miles traveled are determined by multiplying gallons of fuel times an average mile per gallon, the records must contain documentation of how the average mile per gallon was established. (11-20-91)~~

~~**08. Documentation of Non-Taxable Miles.** If a percentage is used to determine the number of non-taxable miles that are included in total miles traveled, the records must contain supporting documentation as to how the percentage was determined. (11-20-91)~~

~~**09. Quarterly Report Audit Trail.** Mileage shall be accumulated into monthly and quarterly summaries for each vehicle registered. Quarterly mileage reports shall be prepared from these summaries. A clear audit trail from source document to summary shall be provided. (11-20-91)~~

~~**802. RETENTION OF RECORDS.**~~

~~Records shall be retained for four (4) years from the date the quarterly report was due. (11-1-94)~~

~~803. ALTERNATE REPORTING METHOD, MULTIPLE WEIGHTS.~~

~~01. **Alternate Reporting Method.** If an owner is operating vehicle combinations where the declared gross vehicle weight of the combination can be reduced by changing the configuration of the vehicle combination, an alternate reporting method is available. The alternate method may apply to owners who operate vehicle combinations consisting of multiple trailer units or owners who operate single trailer combinations where changes in the number of trailer axles or trailer sizes may reduce the declared gross vehicle weight. To use the alternate method:~~
(11-1-94)

~~a. The owner must apply to use multiple weight reporting by complying with Sections 804 and 805 of this rule.~~
(11-1-94)

~~b. A vehicle configuration can not be less than sixty-two thousand (62,000) pounds declared gross vehicle weight.~~
(11-1-94)

~~c. The owner must register the motor vehicle at the declared combined gross vehicle weight that represents the heaviest vehicle configuration to be used.~~
(11-1-94)

~~d. The owner may apply for up to two (2) maximum gross weights for each combination in addition to the gross weight declared at the time of registration.~~
(11-1-94)

~~02. **Multiple Weight Reporting.** When reporting at multiple weights, the owner may report and pay for miles at a reduced weight based upon the declared gross vehicle weight of the vehicle configuration, as configured for each trip segment, which was set forth in the multiple weight reporting application. Idaho law does not allow for a reduction of the declared gross vehicle weight based upon actual laden weight or empty weight, i.e., whether loaded or empty the reporting weight is either the registered declared gross vehicle weight or the declared gross vehicle weight based upon the reduced configuration.~~
(11-1-94)

~~804. APPLICATION REQUIREMENTS, MULTIPLE WEIGHTS.~~

~~01. **Application for Alternate Reporting Method.** An owner who qualifies to use the provisions of Section 803 may only do so after submitting a properly completed application to the Department setting forth the required information. Retroactive filing of the application will not be accepted or approved, except when requested within the current calendar year. Owners who do not submit an application are deemed to have made a decision not to use the multiple weight reporting method. An owner who attempts to use multiple weight reporting without approval will have the fee recalculated to the declared gross vehicle weight upon audit, and the additional fee due plus penalties will be levied.~~
(11-1-94)

~~02. **Annual Application.** After the initial filing the owner is required to file an application for multiple weight reporting annually, setting forth the description of each tractor, truck tractor and trailer, the gross weights designated for each tractor or truck tractor, and any other information the Department may require. The owner is required to update the application during the course of the year with any additions or deletions in equipment that may occur during the year.~~
(11-1-94)

~~03. **Renewal Application.** Once an owner has applied and received approval to use multiple weight reporting, the Department will mail to the owner a renewal application each year providing the owner maintains the correct address on the Department's files. However, failure to receive the renewal application and return it to the Department shall not be construed as a valid reason for reporting at multiple weights without having filed the application and received approval.~~
(11-1-94)

~~04. **Duplicate Forms.** Receipt of quarterly reporting forms that are a result of the owner's registration application that duplicate the forms that would be obtained by filing the annual application to report at multiple weights does not mitigate the owner's responsibility to file the annual multiple weight reporting application.~~
(11-1-94)

~~805. RECORD KEEPING REQUIREMENTS, MULTIPLE WEIGHTS.~~

~~01. **Owners Responsibility.** It is the owner's responsibility to develop an adequate record keeping system which will clearly identify and support the miles reported by individual vehicle configuration. An acceptable source document is some type of Individual Vehicle Mileage Record (IVMR) for each trip containing the following basic information which must be contained on a single document: (11-1-94)~~

- ~~a. Date of trip (starting and ending). (12-26-90)~~
- ~~b. Trip origin and destination. (12-26-90)~~
- ~~c. Route of travel (including pick up and delivery locations). (11-20-91)~~
- ~~d. Total trip miles. (12-26-90)~~
- ~~e. Mileage by state. All miles traveled on state highways, county and highway district highways and city highways are taxable. (8-4-95)~~
- ~~f. Unit number. (12-26-90)~~
- ~~g. Vehicle fleet number, if any. (12-26-90)~~
- ~~h. Owner's name. (11-1-94)~~
- ~~i. Trailer unit number. The IVMR must clearly show what configuration the combination of vehicles was in for each trip by showing the trailer unit number(s) on the IVMR. If trailers were dropped or added during a trip, the miles of travel in each configuration must be shown on the IVMR by adding or deleting trailer unit numbers. (11-20-91)~~
- ~~j. Gross weight carried in each configuration if registered or reporting a vehicle configuration at a gross weight less than allowable under Section 49-1001, Idaho Code. (11-1-94)~~
- ~~k. If more than one (1) weight is declared for a single, double, or triple configuration, the owner must maintain a master list of trailers that shows unit number and size of each. (11-1-94)~~
- ~~l. Driver's name. (11-20-91)~~
- ~~m. Commodity hauled if registered as a special commodity carrier. (11-1-94)~~

~~02. **Changes in Gross Vehicle Weight.** For registration purposes, any change in the declared gross vehicle weight of the truck or truck tractor must be accompanied by a properly completed supplemental registration (IRP) application for apportioned owners or by application to increase the declared gross weight by intrastate or fully licensed owners. (11-1-94)~~

~~03. **Information Changes.** Any change in the information provided on the multiple weight application form such as adding or deleting vehicles or increases in the declared combined gross vehicle weight must be provided to the Department on a revised application form. (11-20-91)~~

~~04. **Inadequate Record Systems.** If an adequate record keeping system is not devised to clearly identify the miles operated in each vehicle configuration, all miles reported will be reassessed at the highest gross vehicle weight declared at the time of registration. A reconstruction of records to identify the miles operated in each vehicle configuration will not be allowed. (11-1-94)~~

~~806. **TRAVEL AUTHORIZATIONS.**~~

~~01. **Method of Payment.** Travel authorizations are sold to owners to move an overweight load to a safe place to legalize the load. The fifty dollar (\$50) fee may be collected at the time the permit is issued or it may be remitted quarterly if the owner is based in Idaho. Owners based outside of Idaho or who are operating on a trip permit are required to pay for the travel authorization when it is issued. (11-1-94)~~

~~02. **Payment Due Date.** The travel authorization forms will specify the due date when the fee is to be remitted and the address of the receiving agency. (11-1-94)~~

~~03. **Compliance with Other Laws and Ordinances.** The travel authorization will be effective only insofar as the Department has authority for its issue and does not release the owner from complying with other existing laws, local ordinances or resolutions which may govern the movement. (8-4-95)~~

~~8071. -- 9899. (RESERVED).~~

5900. APPEAL PROCEDURE.

01. Filing of Appeal. ~~An owner registrant~~ wishing to contest a ~~decision on a~~ penalty waiver or suspension of a registration or an account may file an appeal within ten (10) days ~~from~~ of receipt of the notice ~~according to procedures specified in Section 49-436, Idaho Code.~~ (11-1-94)()

02. Delivery of Appeal. The appeal must be either hand delivered or mailed to Director Commercial Vehicle Services Manager, Idaho Transportation Department, P.O. Box 34 7129, Boise, Idaho 83734 ~~7107-1129.~~ (11-20-91)()

03. Delivery of ~~Legal~~ Decision. A copy of the ~~Findings of Fact and Conclusions of Law~~ final decision in response to the request will be sent to the ~~owner~~ registrant. (11-1-94)

~~901. -- 599. (RESERVED).~~

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.45 - RULES GOVERNING SALE OF NO LONGER USEFUL OR USABLE REAL PROPERTY

DOCKET NO. 39-0345-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2006.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 58-335A, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rule-making:

In the 2005 legislative session, Senate Bill 1083 amended Section 58-335A, Idaho Code, to allow local government entities to acquire surplus ITD property, for other than transportation purposes, at a negotiated price, up to the appraised value, expressly for public purposes, with sales proceeds to the State Highway Account.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with Senate Bill 1083, enacted effective July 1, 2005.

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 RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule-making is necessary for compliance with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Leonard Hill, Right-of-Way Manager, 334-8520.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 23rd day of August, 2006.

Linda L. Emry, Management Assistant
Budget, Policy, and Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129
Boise ID 83707-1129
Phone - 208-334-8810
FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0345-0601

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.45 "Rules Governing Sale of No Longer Useful or Usable Real Property." IDAPA 39, Title 03, Chapter 45. (9-1-06)T

02. Scope. This rule *establishes a process* contains guidelines for selling no longer useful or usable real property under the ownership and control of the Idaho Transportation Department. (~~7-1-97~~)(9-1-06)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (9-1-06)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (9-1-06)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (9-1-06)T

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. (9-1-06)T

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (9-1-06)T

03. Telephone and FAX Numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (9-1-06)T

04. Idaho Transportation Department District Offices are at the following locations: (9-1-06)T

a. Idaho Transportation Department District 1
Mailing address - 600 W. Prairie
Coeur d'Alene, Idaho 83815-8764
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone
Phone - (208) 772-1200 (9-1-06)T

b. Idaho Transportation Department District 2
2600 Frontage Road, Lewiston
Mailing address - P.O. Box 837
Lewiston, Idaho 83501-0837
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone
Phone - (208) 799-5090 (9-1-06)T

c. Idaho Transportation Department District 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028
Boise, Idaho 83707-2028
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone
Phone - (208) 334-8300 (9-1-06)T

d. Idaho Transportation Department District 4

216 Date Street, Shoshone
Mailing address - P.O. Box 2-A
Shoshone, Idaho 83352-0820
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone
Phone - (208) 886-7800

(9-1-06)T

e. Idaho Transportation Department District 5
5151 South 5th, Pocatello
Mailing address - P.O. Box 4700
Pocatello, Idaho 83205-4700
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone
Phone - (208) 239-3300

(9-1-06)T

f. Idaho Transportation Department District 6
206 North Yellowstone, Rigby
Mailing address - P.O. Box 97
Rigby, Idaho 83442-0097
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone
Phone - (208) 745-7781

(9-1-06)T

006. PUBLIC RECORDS ACT COMPLIANCE

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code.

(9-1-06)T

0027. -- 009. (RESERVED).

010. DEFINITION.

01. Surplus Real Property. Real property and the improvements thereon under the ownership and control of the Idaho Transportation Department outside the right-of-way limits which the Chief ~~of Highway Operations~~ Engineer or his designee declares no longer useful or usable by the department. ~~(7-1-97)~~(9-1-06)T

02. Real Property. Real property and improvements within the Right-of-Way limits. (7-1-97)

03. Appraisal. An opinion of value formulated by a licensed Appraiser. (7-1-97)

04. Surplus Property Value Estimate. An estimate of value for surplus real properties valued at ten thousand dollars (\$10,000) or less formulated by the Idaho Transportation Department or its agents. (7-1-97)

05. Public Sale. Public auction or sealed bid. (7-1-97)

06. Administrative Fee. A fee determined by the Department to include direct sale expenses. (7-1-97)

07. Department. Idaho Transportation Department. (7-1-97)

08. District. Individually or collectively the jurisdictional areas of the department. (7-1-97)

09. Agent. Any individual, firm, partnership, or corporation that has contracted with the Department to express an opinion of value on surplus real property owned by the Department. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

200. COVERED PROPERTY.

Based upon recommendations by the District Engineer and concurrence of the Materials, Planning, ~~Maintenance,~~

~~Traffic~~ Highway Operations and Safety and/or interested headquarter sections, property no longer useful or usable for the needs of the Department is recommended for disposal. (7-1-97)(9-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

301. METHOD OF SALE FOR PROPERTY VALUED AT LESS THAN TEN THOUSAND DOLLARS.

~~The department shall offer the property for sale at an amount not less than the Surplus Property Value Estimate. The Property shall first be offered to all adjoining contiguous property owners. If more than one (1) adjoining contiguous property owner is interested in the property, a private auction will be held between the adjacent those contiguous owners wishing to purchase the property. If the property is not purchased by an adjacent owner, it shall be offered at public sale. It shall be offered at an amount not less than the value estimate or appraisal. The sales price shall include any administrative fees established by the department. Term sales of up to five (5) years may be offered at the discretion of the department. If the property is not purchased by a contiguous owner, it shall be offered to public entities in the manner and in accordance with the priority set out in Section 302.~~ (7-1-97)(9-1-06)T

~~302. METHOD OF SALE FOR PROPERTY VALUED AT TEN THOUSAND DOLLARS OR GREATER SALE OR EXCHANGE OF PROPERTY TO TAX SUPPORTED ENTITIES AT THE APPRAISED VALUE.~~

~~The department shall first offer the property for sale or exchange at the appraised price value to the following: state agencies, the county and in which the property is located, the city where in which the property is located, the highway district in which the property is located. The State agencies are given first priority to purchase acquire the property, county second, city third and highway district fourth. If none of the above public agencies purchase the property, it will be offered at public sale. Other tax supported entities not enumerated will not specifically be notified, but will have the fifth priority to purchase the property. The sales price shall include any administrative fees established by the department. Term sales of up to twenty (20) years may be offered at the discretion of the department.~~ (7-1-97)(9-1-06)T

303. SALE OR EXCHANGE OF PROPERTY TO TAX SUPPORTED ENTITIES FOR LESS THAN THE APPRAISED VALUE.

If none of the public agencies referenced in Section 302 wishes to purchase the property at the appraised value, the department may negotiate a sale or exchange of the property at less than the fair market value to any tax-supported agency or political subdivision of the state of Idaho, excluding state agencies, in whose jurisdiction the property resides. The priority and process set out in Section 302 shall apply; except that the order of priorities shall not include state agencies. The first priority will be given to counties, the second to cities, the third to highway districts and fourth to other tax supported entities. If property is sold or exchanged for less than the fair market value it must be used exclusively and in perpetuity for a public purpose. The specific public use will be set out in the deed of transfer and if the use is violated or discontinued the property will revert to the ownership of the department. If jurisdiction, value or use cannot be agreed upon between the department and a public agency the property will be offered at a public sale in accordance with the provisions of Section 304. Any surplus department property originally purchased using federal funds must receive the approval of the Federal Highway Administration prior to being sold or exchanged for less than the appraised value. (9-1-06)T

304. METHOD OF SALE FOR PROPERTY NOT PURCHASED BY A PUBLIC ENTITY OR A CONTIGUOUS PROPERTY OWNER.

If no public agency purchases a property offered for sale, or if property appraised under ten thousand dollars (\$10,000) is not purchased by a contiguous property owner or by a public agency, the surplus property will be offered at public sale for not less than the appraised price. The sales price shall include any administrative fees established by the department. Term sales of up to twenty (20) years (five (5) years if the property is purchased for less than ten thousand dollars (\$10,000)) may be offered at the discretion of the department. (9-1-06)T

~~303~~5. -- 399. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.62 - RULES GOVERNING LOGO SIGNS

DOCKET NO. 39-0362-0601 (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 procedures. The action is authorized pursuant to Section(s) 40-312, 40-313, 40-1911(5), and 67-5229, Idaho Code, and U.S.C. Title 23, Chapter 1, 131 and 156.

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 18, 2006.

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 document incorporated by reference has been revised to reflect the current edition of the Manual on Uniform Traffic Control Devices (MUTCD), 2003 Edition, including Revision One, dated July 21, 2004, as adopted by the State, effective April 1, 2005. Changes include provisions for attractions, 24-hour pharmacies, and RV friendly symbols on logo signs. Facilities are also allowed to operate under conditional qualification.

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

The application fee increase for new logo signs, from \$75 to \$100, makes it consistent with the fee for changing a sign design. The logo trailblazer fee of \$100 is removed and replaced with a \$25 annual fee which will offset some cost of installation, on-going maintenance labor, and the post assembly. The entire fee schedule can be found in the document incorporated by reference. See the Logo coordinator contact list on-line to find a contact person near you and to obtain a copy of the incorporated document: <http://itd.idaho.gov/highways/ops/Traffic/PUBLIC%20FOLDER/Policies/Logo/LOGO%20Contacts.pdf>.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because changes to the document incorporated by reference are based on conformance with the current publication of the MUTCD, adopted by the state, effective April 1, 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brent Jennings, Highway Operations and Safety Manager, 334-8557.

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 25, 2006.

DATED this 23rd day of August, 2006.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810
FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0362-0601

000. LEGAL AUTHORITY.

The Idaho Transportation Board adopts this rule under the authority of Sections 40-312, 40-313, 40-1911(5) and 67-5203A29, Idaho Code, and U.S.C. Title 23, Chapter 1, ~~625~~ 131 and ~~655~~ 156. (4-5-00)(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as *Rules of the Idaho Transportation Department*, IDAPA 39.03.62, "Rules Governing Logo Signs". (4-5-00)(____)

02. Scope. These ~~publication~~ rules provides regulations for the installation and administration of ~~motorist information specific service~~ signs ~~giving specific information in the interest of the traveling public~~ informing motorists of gas, food, lodging, ~~and~~ camping, attractions, and 24-hour pharmacies with their related tourist services, which are available at facilities accessible to and from eligible interchanges. (4-5-00)(____)

002. WRITTEN INTERPRETATIONS.

This agency does not rely on written interpretations for these rules. (____)

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01. "Idaho Rules of Administrative Procedure of the Attorney General." (____)

004. INCORPORATION BY REFERENCE.

The Idaho Transportation Board incorporates by reference its ~~September 1998~~ April 2007 publication titled "Standards and Procedures for Specific Service Signs Giving Specific Information in the Interest of the Traveling Public Along on the Interstate Highways and Other Fully Controlled Access Highways (Logo Signs)." (4-5-00)(____)

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. (____)

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (____)

03. Telephone and FAX Numbers. The central office Traffic Section may be contacted during office hours by phone at 208-334-8557 or by fax at 208-334-4440. (____)

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (____)

007. -- 099. (RESERVED).

100. GENERAL.

Copies of the ~~program~~ publication and applications for signing may be obtained from the Department's ~~Traffic Supervisor~~ Logo Coordinator at the Headquarters Office in Boise or from a District Office in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello, or Rigby. The Logo coordinator contact list is available on-line at: <http://itd.idaho.gov/highways/ops/Traffic/PUBLIC%20FOLDER/Policies/Logo/LOGO%20Contacts.pdf>. (4-5-00)(____)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.64 - RULES GOVERNING TOURIST ORIENTED DIRECTIONAL SIGNS (TODS)

DOCKET NO. 39-0364-0601 (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 procedures. The action is authorized pursuant to Section(s) 40-312, 40-313, 40-1911(5), and 67-5229, Idaho Code, and U.S.C. Title 23, Chapter 1, 131.

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 18, 2006.

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 document incorporated by reference has been revised to reflect the current edition of the Manual on Uniform Traffic Control Devices (MUTCD), 2003 Edition, including Revision One, dated July 21, 2004, as adopted by the State, effective April 1, 2005. Changes include provisions for RV friendly symbols on tourist oriented directional signs and signing for facilities located in a bypassed community.

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

This rulemaking adds a \$25 installation fee for TODS trailblazer signs which covers the cost to fabricate the signs, not the labor or materials to install. It also adds a \$50 fee for sign relocation (removal and reinstallation). Both have been added to maintain consistency between the standards for TODS and Logos. When collected, the \$25 fee will be deposited in the State Highway Account. See the TODS coordinator contact list on-line to find a contact person near you and to obtain a copy of the incorporated document: <http://itd.idaho.gov/highways/ops/Traffic/PUBLIC%20FOLDER/Policies/TODS/TODS%20Contacts.pdf>.

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

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because changes to the document incorporated by reference are based on conformance with the current publication of the MUTCD, adopted by the state, effective April 1, 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brent Jennings, Highway Operations and Safety Manager, 334-8557.

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 25, 2006.

DATED this 23rd day of August, 2006.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810 / FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0364-0601

000. LEGAL AUTHORITY.

The Idaho Transportation Board adopts this rule under the authority of Sections 40-312, 40-313, 40-1911(5) and 67-5203A 29, Idaho Code, and U.S.C. Title 23, Chapter 1, 131. (3-17-99)()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as ~~Rules of the Idaho Department of Transportation,~~ IDAPA 39.03.64, "Rules Governing Tourist Oriented Directional Signs (TODS)." (3-17-99)()

02. Scope. ~~This program is to~~ These rules provide regulations for the installation and administration of tourist oriented directional signing within the right-of-way of the primary and secondary highway system, excluding fully controlled access sections, for tourist oriented businesses (including seasonal agricultural products), services, and activities. (3-17-99)()

002. WRITTEN INTERPRETATIONS.

This agency does not rely on written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01. "Idaho Rules of Administrative Procedure of the Attorney General." ()

0024. INCORPORATION BY REFERENCE.

The Idaho Transportation Board incorporates by reference its ~~July, 1999~~ April 2007 publication titled "Standards and Procedures for Tourist Oriented Directional Signs (TODS) for Services and Activities Motorist Service Facilities Along Primary and Secondary the State Highway System Except Fully Controlled Access Highways." (3-17-99)()

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and FAX Numbers. The central office Traffic Section may be contacted during office hours by phone at 208-334-8557 or by fax at 208-334-4440. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

0037. -- 099. (RESERVED).

100. GENERAL.

Copies of the ~~program~~ publication and applications for signing may be obtained from the Department's ~~Traffic Supervisor~~ TODS Coordinator at the Headquarters Office in Boise or from a District Office in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello or Rigby. The TODS coordinator contact list is available on-line at: <http://itd.idaho.gov/highways/ops/Traffic/PUBLIC%20FOLDER/Policies/TODS/TODS%20Contacts.pdf>. (12-11-99)()

IDAHA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.04.07 - RULES GOVERNING AERIAL SEARCH AND RESCUE OF LOST AIRCRAFT AND AIRMEN

DOCKET NO. 39-0407-0601

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 procedures. The action is authorized pursuant to Section(s) 21-111, 21-114, and 21-142, 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 18, 2006.

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 2005 Legislature amended Section 21-114, Idaho Code, Registration of Pilots and Aircraft, and Section 46-1006, Idaho Code, Powers and Duties of Chief and Bureau, by placing the coordination of search and rescue under the direction and supervision of the Chief of the Bureau of Homeland Security while requiring aerial search and rescue operations be coordinated by the Idaho Transportation Department, Division of Aeronautics.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule-making is necessary for compliance with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bob Martin, Aeronautics Division Administrator, 334-8788.

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 25, 2006.

DATED this 23rd day of August, 2006

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street - PO Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0407-0601

000. LEGAL AUTHORITY.

Pursuant to Section 21-142(16), Idaho Code, The Idaho Transportation Board has ~~promulgated~~ adopted this rule concerning search and rescue of lost aircraft and airmen as required by under the authority of Sections 21-114, and 21-142, Idaho Code. This rule is based on the concept of providing humanitarian relief so that others may live.

(11-28-90)()

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.04.07 “Rules Governing Aerial Search and Rescue of Lost Aircraft and Airmen”. ()

02. Scope. This rule establishes standards and criteria for the department’s role in the coordination of aerial operations under the oversight of the Bureau of Homeland Security, per Sections 46-1006 and 46-1009, Idaho Code. ()

01a. Department Authority. As applied to the ~~Department of Idaho~~ Transportation Department, Section 21-114, Idaho Code, provides coordination of operations for aerial search and rescue. As applied to the Military Division, Bureau of Homeland Security (BHS), Sections 46-1006 and 46-1009, Idaho Code, provides for the direction and supervision of search and rescue under the Bureau Chief of BHS, per Section 21-114, Idaho Code. Federal-state agreements (ARRS Operation Plan 9506), Interstate agreements, the National Search and Rescue Plan (AFM 64-2), and the President’s policy to provide for effective search and rescue throughout the world, are the basis of the Department of Transportation responsibility and authority for aerial search and rescue operations of lost aircraft and airmen. Section 21-118, Idaho Code, directs other state agencies and municipalities to make available their facilities and services. Section 21-119, Idaho Code, establishes the responsibility of the Department to enforce the Aeronautics Act, rules, regulations, and orders. (1-2-93)()

02b. Department Responsibility. The department will control, ~~coordinate, and supervise~~ aerial search and rescue operations for lost and overdue civil aircraft and airmen on intrastate flights, portions of interstate flights in and over Idaho, and may assist the Air Force Rescue Coordination Center (AFRCC) in search and rescue efforts for military, public, and commercial air carrier aircraft in and over Idaho. Search and rescue coordination shall be under the direction and supervision of the Bureau Chief of the Bureau of Homeland Security. (1-2-93)()

03c. Search and Rescue Agreements. The department shall formulate search and rescue agreements and search and rescue plans in support of the Idaho aerial search and rescue mission responsibility as necessary or which may become necessary. (11-28-90)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and FAX Numbers. The aeronautics division office may be contacted during office hours by phone at 208-334-8775 or by fax at 208-334-8789. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

~~0027.~~ -- 009. (RESERVED).

010. DEFINITIONS.

01. Aerial Search and Rescue Funding. A dedicated source defined in Section 21-114, Idaho Code, derived from airman registration fees. (11-28-90)

02. Aerial Search and Rescue Volunteer. One who volunteers services for humanitarian relief. When accepted in support of SAR missions, SAR volunteer shall become quasi-state employee and be protected by state workman's compensation insurance. (11-28-90)

03. Aerial Search and Rescue Volunteer Aircraft. A civil aircraft voluntarily made available to be used in aerial search and rescue operations. (11-28-90)

04. Aerial Search and Rescue Volunteer Pilot/Observer. A pilot/observer qualified in accordance with the Idaho Transportation Department Aerial Search and Rescue Manual. (11-28-90)

05. AFRCC. Air Force Rescue Coordination Center, the single agency through which federal SAR missions will be prosecuted and federal assistance requested for SAR in the inland region. It is a coordinating agency only. (11-28-90)

06. Airman/Airmen. Any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while underway. For the purpose of this regulation, search shall be conducted for airmen and passenger(s) of lost aircraft. (11-28-90)

07. ARRS. Aerospace Rescue and Recovery Service. (11-28-90)

08. Board. Idaho Transportation Board. (11-28-90)

09. Bureau of Homeland Security (BHS). State agency in charge of preparing for and/or providing assistance during and after natural or man-made disasters. ()

~~09~~**10. Civil Aircraft.** Aircraft other than public aircraft. (11-28-90)

~~10~~**1. Department.** Idaho Transportation Department. (11-28-90)

~~11~~**2. Director.** Director of the Idaho Transportation Department. (11-28-90)

~~12~~**3. District Aerial Search and Rescue Coordinator.** A designated representative of the State Search and Rescue Coordinator. (11-28-90)

~~13~~**4. National Search and Rescue Manual.** That manual for guidance of U.S. Federal Forces, military or civil, participating in search and rescue (SAR) operations. (7-1-97)

~~14~~**5. National Search and Rescue (SAR) Plan.** Aerospace Rescue and recovery Service Operations Plan Number 9506, entitled, "Inland Search and Rescue". It coordinates the SAR efforts among the states and federal agencies. (11-28-90)

~~15~~**6. SAR.** A commonly used abbreviation for search and rescue. (11-28-90)

~~16~~**7. Search and Rescue.** (SAR) (11-28-90)

a. Search - An investigative act to determine the location of lost aircraft or airman. (7-1-97)

b. Rescue - Deliver from danger, to save. (11-28-90)

~~17~~**8. Search and Rescue Agreements.** SAR agreements involving federal, state, local, and private

agencies, and/or individual(s). (11-28-90)

189. Search Base(s). Those locations designated by the state aerial search and rescue coordinator as primary operating location(s) from which a search effort will be conducted. (7-1-97)

190. Search Districts. Those six (6) areas throughout the State which are designated as aerial search and rescue districts by the Idaho aerial search and rescue plan. These areas are the same as the states six (6) highway districts. (7-1-97)

201. State. State of Idaho. (11-28-90)

212. State Aerial Search and Rescue Coordinator. Director, Idaho Transportation Department, or his duly appointed representative, responsible for directing, coordinating and supervising all phases of aerial search and rescue operations. (11-28-90)

223. State Aerial Search and Rescue Plan. Those plans, policies, and procedures set forth in the Department Aerial Search and Rescue Manual. (11-28-90)

(BREAK IN CONTINUITY OF SECTIONS)

101. SEARCH INITIATION.

When notification is received from agencies, or individual(s) which constitute reasonable probability that an aircraft or airman is down, lost, or missing, a search shall be initiated as described in the National SAR Plan, the Idaho Transportation Department SAR Manual and/or at the discretion of the Department upon mutual agreement between the department and the BHS. Safety, weather, darkness, and other operational factors may influence the conduct of the search including time of initiation, duration, and suspension. (~~11-28-90~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

200. PROCEDURE.

01. Search and Rescue Guideline. The Idaho Transportation Department Aerial Search and Rescue Manual (Plan) shall provide guidelines for effectively conducting aerial search and rescue operations. It shall establish requirements for crew qualification, adequacy of volunteer search aircraft performance, and District Aerial SAR Coordinator qualifications. In order to effectively implement the State SAR Plan, the State Aerial SAR Coordinator may make SAR agreements as necessary with other agencies/organization(s)/individual(s). They may be either informal verbal agreements or they may be formal written documents. Agreements shall provide for the maximum practicable cooperation of such agencies/organization(s)/individual(s) and the use and coordination of facilities committed to SAR missions. Written agreements will normally involve officials of comparable levels in their respective agencies. Written agreements should be as brief as possible, covering only those specific items for which the agreement is deemed necessary. They should not be repetitious or contradictory of matters contained in the National SAR Plan. (7-1-97)

02. District Aerial SAR Coordinators. The State Aerial SAR Coordinator shall assign District Aerial SAR Coordinators who act under the direction of the State Aerial SAR Coordinator, organizing the volunteer personnel and resources of his assigned search district area for maximum efficiency, safety, and economy. Said District Coordinator may be either a volunteer, state employee or other individual as assigned by the State Aerial SAR Coordinator. (7-1-97)

03. Designations by State Aerial SAR Coordinators. The State Aerial SAR Coordinator will designate airports of primary operational support as necessary in the aerial search effort. The State Aerial SAR Coordinator may designate Temporary Flight Restrictions (TFR) under Federal Aviation Regulation (FAR) 91.137 as required for safety of search aircraft. Normally the State Aerial SAR Coordinator will function in the Division of Aeronautics facilities but the option to dispatch state coordinator to the airport(s) of primary support, State EOC, or

other location as necessary, may be exercised. State Division of Aeronautics aircraft may be used as necessary with state crews or with state pilot in command and volunteer pilot/observer(s). Volunteer aircraft and crews shall be screened by the District Aerial SAR Coordinator for availability, qualification, and willingness to participate in the search. Flight logs and mission records shall be maintained and all pertinent information shall be screened and recorded and forwarded to the State Aerial SAR Coordinator at the close of the mission or as requested. (1-2-93)

04. Interstate Coordination. On some occasions the aerial search and rescue effort may need to extend into bordering states or Canada. Interstate coordination with other states/Canada shall be achieved as necessary by the Department for SAR mission needs. Coordination with other search and rescue organization(s)/ individual(s) may be developed as needed or necessary. Such considerations as weather, time, no flight plan, no emergency locator transmitter signals, ~~no~~ availability, or limited search resources near the objective search area(s) may dictate extending Idaho resources into bordering states/Canada. In a like manner, it may sometime become necessary for bordering states/Canada to extend their resources into Idaho. (7-1-97)()

05. Funds. Aerial search and rescue funds shall be used solely in support of aerial SAR efforts. Financial support of aerial SAR volunteers shall include but not be limited to SAR training, education, equipment, coordinating efforts, communications, and aircraft fuel and oil expenses. (11-28-90)

06. Official Mission Report. A report shall be made to the State Aerial SAR Coordinator by the District Aerial SAR Coordinator at the termination of daily search activity. The State Aerial Coordinator SAR shall consolidate all necessary report information and relay it to AFRCC. All mission working papers which are accumulated during the course of the search mission will be analyzed for meaningful content upon which to base operational decisions and the final official mission report. (11-28-90)

07. Time Period of Searches. Aerial searches shall be continued until either successful or until all reasonable leads are exhausted and/or passage of time has drastically reduced the possibility of survival. If search is unsuccessful and all leads have been exhausted, the search may be suspended ~~by the Director~~ upon mutual agreement between the department and the BHS until either new leads are received or conditions have changed which increases the probability of detection. (7-1-97)()

08. Completion of Search. Searches will be closed when the search and rescue objective has been located, the respective county sheriff notified, it is certain that authorized ground personnel gain access to the search objective for positive identification of missing or downed aircraft and assistance to possible survivors, and post mission procedures are completed. (11-28-90)

09. Required Reports. Upon completion of the mission, all cooperating/participating agencies shall be advised as promptly as possible. News releases shall be made as deemed appropriate by the State Aerial SAR Coordinator. It shall be ascertained that all search aircraft are accounted for. A report of mission activity shall be made to AFRCC. A synopsis of the entire mission shall be developed by the State Aerial SAR Coordinator. The following forms shall be attached to the synopsis: (11-28-90)

- a. Search and Rescue Information Sheet (APT-2600). (11-28-90)()
- b. Search ~~Aircraft Operations Log~~ and Rescue Action Report (APT-2603~~1~~). (11-28-90)()
- c. Air Search and Rescue Fuel and Oil Record (APT-2602). (11-28-90)()
- d. Mission Authorization, Personnel Register (APT-2604). (11-28-90)()
- e. Mission Flight Plan Briefing and Debriefing Log (2605) ()
- ef. Search and Rescue (SAR) Mission Report (APT-2606A). (11-28-90)()

10. Final Report. The synopsis and attachments shall constitute the final official search and rescue mission report. (11-28-90)

IDAPA 41 - PUBLIC HEALTH DISTRICTS

41.01.01 - RULES OF PANHANDLE HEALTH DISTRICT 1

DOCKET NO. 41-0101-0601

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 39-416, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held in Coeur d'Alene and Kellogg, not less than fourteen (14) days after publication of this Notice. Exact dates and times will be published as required by law once hearing dates are chosen.

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:

Expand Institutional Controls Program to include OU-3 (Coeur d'Alene River Basin) because remediation is taking place in OU-3 of the Bunker Hill Superfund site cleanup. Rules proposed are very similar to existing rules codified in IDAPA 41.01.01.500 - merely covers additional lands with minor changes in procedure and standards to reflect differences in Record of Decision. Additional changes have been proposed to the District's rules to clarify sewage disposal systems standards and procedures, to clarify existing rules regarding critical materials on the Rathdrum Prairie Aquifer, to correct outdated references to the Department of Health and Welfare and to include required sections as requested by the Office of Administrative Rules.

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

Specific fees established by prior rule will be extinguished, to be set by resolution of the Board of Health in subsequent proceedings in accordance with provisions of IDAPA 41.02.01. No fees will be established by this rulemaking.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive negotiation with potentially affected parties was conducted prior to rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Jerry Cobb (Shoshone County/Bunker Hill), 114 West Riverside, Kellogg, ID (208) 783-0707 or Dale Peck, (all other changes) 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dale Peck, Panhandle Health District, 8500 North Atlas Road, Hayden, ID 83835 and must be delivered on or before 5:00 p.m., local time, on October 25, 2006.

DATED this 30th day August, 2006.

Jeanne Bock, Director
Public Health District #1
8500 North Atlas Road
Hayden, ID 83835
Phone: (208) 415-5100
Fax (208) 415-5106

THE FOLLOWING IS THE TEXT OF DOCKET NO. 41-0101-0601

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 41.01.01, "Rules of Idaho Public Health District #1." ()

02. Scope. These rules shall govern issues concerning the mission of Idaho Public Health District #1 as established by the Idaho Legislature, in particular addressing matters of local concern in order to protect public health and the environment in the counties that comprise the District. ()

002. WRITTEN INTERPRETATIONS.

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available for public inspection and copying at cost in the principal place of business of this agency. ()

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. Office Hours. The main office of the District is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. ()

02. Mailing and Street Address. The District's mailing/street address is: Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835. ()

005. PUBLIC RECORDS.

Subject to Idaho Code provisions and applicable Federal statutes and regulations, official documents of the Panhandle Health District may be examined after filing of proper written request filed in the office of the Director at the address above. Among others, health-related and personnel-related records are generally not subject to public disclosure. Additional public records information may be obtained by contacting the Director's office. ()

0046. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

100. WATER QUALITY CONTROL.

01. Sewage and Waste Disposal -- Political Subdivisions. Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

02. Sewage and Waste Disposal -- Public Sewage Treatment. All public sewage treatment facilities shall be constructed and operated in accordance with applicable state and federal laws. All public sewage treatment facilities constructed after the effective date of this rule shall be owned, operated, or maintained by a political subdivision of the state of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the

Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two (2) disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available. (7-1-93)

03. Sewage and Waste Disposal -- Private Sewage Disposal. No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

a. This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

b. The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of ~~Health and Welfare~~ Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. (~~7-1-93~~)()

c. No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

d. No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

e. The determination of wastewater flow for residential structures will be based on whichever of the following two methods is greater: ()

i. Zero point twelve (0.12) gallons per day (gpd) per square foot of habitable space or ()

ii. The method of determining flows as outlined in IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," or their successor. ()

f. Septic tanks serving a dwelling unit must have a minimum liquid capacity of one thousand (1000) gallons. Tank capacity must be increased by two hundred fifty (250) gallons for each fifty (50) gpd incremental increase in flow (or portion thereof) over three hundred (300) gpd. ()

04. Sewage and Waste Disposal -- Septage Disposal Site. It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

a. Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

b. Any person engaged in the business of removing and transporting sewage shall comply with all applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

c. All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300)

feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

05. Sewage and Waste Disposal -- Prohibited Conditions. (7-1-93)

a. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

b. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. (7-1-93)

c. Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. (7-1-93)

06. Sewage and Waste Disposal. Expansion or Replacement of a Structure with Existing Waste Disposal System (Vested Rights). ()

a. The square footage of habitable space will be used to determine a vested right for expansion or replacement of a structure with an existing wastewater system. ()

b. An increase in square footage of habitable space by more than ten percent (10%) when replacing or remodeling an existing structure with an existing wastewater system will require a septic system that meets current standards. ()

c. An application for a subsurface sewage disposal repair permit is required for all remodeling or replacement of an existing structure served by a sewage disposal system which fails to have both a septic permit and an approved final inspection. The sewage disposal system must be upgraded to current standards if possible. If this is not possible, the sewage disposal system must be upgraded to the best possible system given the constraints of the property. The remodeled or replacement structure will be limited to no more than one hundred ten percent (110%) of the original structure's square footage of habitable space. An alternative system may be required. ()

d. If a system has ceased to receive wastewater for one year or more, the system is considered abandoned. The abandoned site must be inspected to determine if it is in compliance with current regulations. If system is in compliance with current regulations, it can be used for the current approved habitable space. If system is not in compliance with current regulations, a repair permit will be required, and the system must be upgraded to current standards if possible. If current standards cannot be met, the best possible system given the constraints of the property must be installed. This may require the use of an alternative system. Once the system has been upgraded, it can be connected to. If the upgrade cannot meet current standards, the dwelling will be limited to no more than one hundred ten percent (110%) of the current approved habitable space. ()

07. Sewage and Waste Disposal. Authorization to Connect to an Installed System. ()

a. This applies to connection to an approved drainfield installation that has never received wastewater flows. ()

b. Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. From July 1, 2007, and thereafter, no permit shall be issued for a septic

system separate from a concurrent request for a permit to establish a specific use and structure to be served by the requested septic system. ()

101. -- 109. (RESERVED).

110. SEWAGE DISPOSAL ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

The Board has determined that extensive use of subsurface wastewater disposal on the Rathdrum Prairie presents a threat to the public health by contamination of the Rathdrum Aquifer, which is a drinking water source. It is the intent of the Board to adopt rules to govern subsurface sewage disposal on the Rathdrum Prairie. (7-1-93)

01. Title. These rules, within this Section, shall be known and cited as the "Rathdrum Prairie Sewage Disposal Rules". (7-1-93)

02. Scope. The provisions of this Section shall apply to subsurface sewage disposal systems installed on the Rathdrum Prairie. (7-1-93)

03. Definitions. The following definitions shall apply to the Rathdrum Prairie sections of these rules. (7-1-93)

a. Sewage Loading. The total liquid volume of sewage produced on any given parcel of land and expressed as gallons/day. (7-1-93)

b. Dwelling Equivalent. The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or shall be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms. (7-1-93)

c. Rathdrum Prairie. That area of land situated in Kootenai County and more particularly defined by the USGS map describing the boundaries of the Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, 1978). (7-1-93)

d. Approved Subdivision. A legally platted parcel of land that has been signed and approved by the Panhandle Health District 1 as meeting the requirements of the Code. (7-1-93)

e. Sewage Management Plan. A method of action, procedure, or arrangement approved by the Panhandle Health District 1 describing how collection, treatment, and disposal of sewage shall be addressed within the boundaries of a political subdivision and shall include a map of the area affected by the Sewage Management Plan. (7-1-93)

04. Subsurface Sewage Disposal Systems. (7-1-93)

a. All installations of subsurface sewage disposal systems must be made in compliance with the Code and the rules of the Idaho Department of ~~Health and Welfare~~ Environmental Quality. (7-1-93)()

b. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed without requirements other than Subsection 110.04.a., if the system is on a single parcel of land of five (5) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5) acres, except where one (1) system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted by these rules, shall maintain the dwelling equivalent(s) allowed for the original parcel of land. (7-1-93)

c. No subsurface sewage disposal system shall be installed on any parcel of land of less than (5) five acres in surface area except under the following conditions: (7-1-93)

i. The parcel of land is located within the boundaries of a public sewer district or municipality where the governing board has adopted a Sewage Management Plan approved by the Board which will result in the construction and operation of, or connection to, a central sewage treatment plant. The Sewage Management Plan area

must be entirely within the boundaries of the municipality, and the Sewage Management Plan must include a map delineating the boundaries of the Sewage Management Plan Area; (7-1-93)

ii. Parcels of land less than five (5) acres in size and acquired or established prior to December 20, 1977, will be permitted for a subsurface sewage disposal system for a single-dwelling equivalent, provided such parcels meet all other rules governing individual and subsurface sewage disposal systems; or (7-1-93)

iii. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading. (7-1-93)

d. On all developments subject to the provisions of Subsection 110.04.c.iii., the subsurface sewage disposal system shall have the dry or wet sewer system with necessary laterals installed within the development. All installations shall be done in coordination with local government planning, and approved by the state Department of Environmental Quality where applicable. (7-1-93)

e. Upon notification by the Health Officer the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on his parcel of land and shall connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to his parcel. (7-1-93)

111. -- 199. (RESERVED).

200. OPEN WATER PROTECTION.

01. Boats and Houseboats. (7-1-93)

a. It is unlawful for any boat, motorboat, floathouse, sailboat, or any other kind of boat containing wastewater facilities to be on the waters of any stream, river, or lake in Panhandle Health District 1 unless such wastewater facilities shall be sealed to prevent a discharge into any waters. The method of sealing such wastewater facilities shall be subject to the approval of Panhandle Health District 1. (7-1-93)

b. Any person authorized by the Health Officer or any law enforcement person may stop and board any boat on the said waters and examine the wastewater facilities on such boats to see that such facilities are properly closed and sealed. (7-1-93)

c. It shall be unlawful for any person to throw overboard, dump, or otherwise dispose of or discharge, or cause, permit, or suffer to be discharged, any garbage, refuse, rubbish, waste, or sewage from any boat into or upon the waters of any stream, river, lake, or other body of water within the boundaries of Panhandle Health District 1. (7-1-93)

d. If any watercraft located upon the waters of this District is found to have a marine toilet which is not in compliance with the requirements of this section, the Health Officer shall have the following alternative or cumulative powers to: (7-1-93)

i. Cause the marine toilet to be locked and sealed to prevent usage; (7-1-93)

ii. Require such watercraft to be removed from the waters of Panhandle Health District 1 until the marine toilets are made to conform with the requirements of this Code. (7-1-93)

02. Public and Private Marinas. (7-1-93)

a. Any marinas, whether public or private, providing moorage for vessels equipped with on-board wastewater facilities shall provide sewage waste disposal facilities. These facilities shall consist of a pump station that is capable of adequately cleaning waste retention tanks on the largest boat that could reasonably use the moorage. Such plans must be approved by the Department of ~~Health and Welfare~~ Environmental Quality. (7-1-93)()

b. All marinas, whether public or private, must provide shore-based toilet facilities for their users.

- (7-1-93)
- 03. Floathouses.** (7-1-93)
- a.** All floathouses must have approved wastewater facilities. (7-1-93)
- b.** All discharges from all floathouses, whether old or new, regardless of source, are prohibited. (7-1-93)
- c.** All floathouses must obtain a sewage permit from Panhandle Health District 1. (7-1-93)
- d.** The cost of the permit shall be set in the fee schedule. (7-1-93)
- 201. -- 299. (RESERVED).**
- 300. LAND QUALITY CONTROL.**
- 01. Solid Waste Collection.** It shall be unlawful for any person, private franchisee, or contract collector haulers to engage in the business of collection, transporting, hauling, or conveying any refuse over the roads, highways, streets, or alleys of Panhandle Health District 1, or to dump or dispose of the same unless and until each person obtains an annual permit from Panhandle Health District 1. (7-1-93)
- 02. Animals and Fowl.** (7-1-93)
- a.** Every pen, yard, kennel, coop, warren, stable, or other enclosure or structure wherein animals or fowl are kept shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odor. (7-1-93)
- b.** No manure shall be allowed to accumulate such that it will be a source of flies or fly breeding, or a source of noxious or offensive odors, dangerous to health, or an unhealthy nuisance. (7-1-93)
- c.** No person owning or controlling the possession of horses, mules, cattle, sheep, goats, hogs, or other animals shall willfully or negligently keep or maintain such animal(s) in enclosures or permit such animal regularly to graze so as to constitute a public health hazard and/or a hazard to water quality. (7-1-93)
- 03. Subdivisions.** (7-1-93)
- a.** All plats as defined in Title 50, Chapter 13, Idaho Code or local subdivision ordinance, shall bear a sanitary restriction in compliance with Sections 50-1326 to 50-1329, Idaho Code. The Health Officer shall be the delegate of the State Board of ~~Health and Welfare~~ Environmental Quality authorized to provide the certificate required in Section 50-1326, Idaho Code. (7-1-93)(____)
- b.** Every person or corporation intending to file any plat with the office of any County Recorder in the District shall first present a copy of the proposed plat to the Health Officer and shall submit a written application for a permit, accompanied by fee as set in the fee schedule. Said application shall state the proposed method of water supply and sewage disposal for each site intended for sale in said plat. The Health Officer may require such additional information as he feels necessary to determine whether the sanitary restriction is satisfied. (7-1-93)
- c.** The Health Officer may require that a plat be served by a public water or sewer system prior to providing a certificate of approval in accordance with Section 50-1325, Idaho Code. (7-1-93)
- d.** In geographic locations where the cost of sewer facilities is presently economically prohibitive, and apparently will remain economically prohibitive during the next ten (10) years, the Health Officer may issue a certificate of approval when the following conditions are satisfied: (7-1-93)
- i.** Soil studies, such as a study of test borings, indicate that proper treatment and disposal can be achieved as determined by the Health Officer; (7-1-93)

- ii. Groundwater, even under the most extreme conditions, will not be closer than six (6) feet from the ground surface; (7-1-93)
- iii. The sewage disposal area has not been filled with more than two (2) feet of material within two (2) years of the date when the permit is requested; (7-1-93)
- iv. At least two (2) drainfield systems can be provided within each lot. (7-1-93)
- e. Nothing in this section shall be deemed to waive or modify in any respect any of the other rules of this Code. Approval of a plat shall not bar or stop the Health Officer at any later time from enforcing any of the rules of this Code. (7-1-93)
- f. All plats shall bear the signature of the Health Officer or his representative before filing. (7-1-93)

04. Vector Control. The Health Officer may require the control or eradication of any rodent, insect, or other arthropod on public or private property which is known to be a vector of human disease when the vector is present in sufficient numbers to represent a health hazard or public nuisance. (7-1-93)

301. -- 399. (RESERVED).

400. CRITICAL MATERIALS AT FIXED FACILITIES ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

01. Purpose and Intent. The purpose and intent of this section is to provide agencies that are currently involved with emergency planning and emergency response duties and businesses with duties to report their handling of chemicals and other potentially hazardous materials, with a mechanism to meet the mandate of existing rules by facilitating channels of communication. It is also intended to aid in protection of the Rathdrum Prairie Aquifer in Kootenai County, designated as a sole source aquifer by the United States of America, from potential sources of contamination from materials handling and storage at facilities located over or adjacent to the Aquifer. The rules strive to achieve such protection through proper use of secondary containment systems at Fixed Facilities that use, store, manufacture or handle Critical Materials. Reporting these chemicals to the concerned agencies will facilitate coordination among industry, government agencies and response personnel so that they may more successfully meet the requirements of the following: (7-1-93)

- a. Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA III). (7-1-93)
- b. ~~Article 80 of The Uniform International Fire Code (UFC).~~ (7-1-93)()
- c. ~~Chapter 9 of The Uniform International Building Code (UBC).~~ (7-1-93)()
- d. Local building, planning and zoning codes applicable to lands which overlie the Aquifer. (7-1-93)
- e. Any applicable rules administered by any other state, federal or local agency which has jurisdiction over matters related to Critical Materials. (7-1-93)

02. Definitions. The following terms shall be construed throughout this Section in a manner consistent with the following definitions: (7-1-93)

- a. Container. Any vessel used to hold critical materials. A single container is one not connected to any other container by way of valves, piping, etc. (7-1-93)
- b. Critical Material. Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a material safety data sheet (MSDS). (7-1-93)

- c.** Critical Materials Compliance Certificate (CMCC). A certificate indicating compliance with the reporting and secondary containment requirements of this rule. (7-1-93)
- d.** Critical Materials Use Activity. Any undertaking that involves the use, storage, manufacture or handling of Critical Materials at a Fixed Facility above the secondary containment quantity set forth in this rule, or incorporated into this rule by reference. (7-1-93)
- e.** Director. The Director of Panhandle Health District 1 or his designee. (7-1-93)
- f.** Fixed Facility. Any established land use, building, dwelling, structure or site upon which or wherein a Critical Material Use Activity is conducted. (7-1-93)
- g.** Key Box. A durable, locked box that holds keys firefighters or other emergency personnel may use to gain entry into a structure. The key box shall be a type approved by the local fire chief pursuant to Section 10.209 of the Uniform Fire Code. (7-1-93)
- h.** Local Emergency Planning Committee (LEPC). A standing committee established by the Office of the Governor through the State Emergency Response Commission (SERC) to fulfill Emergency Planning and Community Right to Know requirements pursuant to SARA III. (7-1-93)
- i.** Material Safety Data Sheets (MSDS). Documentation required by OSHA to provide a description of the characteristics and potential hazards of a wide range of substances that are potentially Critical Materials. (7-1-93)
- j.** NFPA 704. The National Fire Protection Association's placarding system used to identify the health hazard, flammability, reactivity and potential to react with water of a particular substance. (7-1-93)
- k.** Secondary Containment Quantity. The quantity of a Critical Material that requires compliance with this rule. For those Critical Materials specifically listed in the SARA III List of Lists (or as otherwise noted) the following quantities of qualifying substances shall be subject to this rule: (7-1-93)
- i.** SARA Section 302 Extremely Hazardous Substances - ten (10) pounds in the aggregate, exclusive of solvent or other medium or, one hundred (100) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)
- ii.** CERCLA Hazardous Substances (listed in 40 CFR 302, Table 302.4) - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)
- iii.** SARA Section 313 Toxic Chemicals - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)
- iv.** SARA Section 311 and 312 Chemicals (Not listed in the List of Lists) for which OSHA MSDS must be developed pursuant to OSHA Hazard Communication Standards - five thousand (5000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)
- l.** Secondary Containment System. Site improvements and/or development criteria that are designed to isolate and prevent Critical Materials from entering the soil or surface or ground waters. (7-1-93)
- m.** Rathdrum Prairie Aquifer (Aquifer). The underground water source identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93- 523) (Federal Register, Vol. 43, No. 28 - Thursday, February 9, 1978). (7-1-93)
- 03. Applicability.** (7-1-93)
- a.** This rule shall apply to any person, firm, corporation, or government agency owning, operating, or

proposing to locate, establish, or operate a Fixed Facility over the Aquifer or within a recognized Aquifer recharge area in Kootenai County, Idaho. Any Fixed Facility so located shall comply with the requirements of this rule prior to initiation of operation or engaging in any Critical Materials Use Activity, if established after the effective date of this rule. Fixed Facilities in operation or engaging in Critical Materials Use Activity on or before September 18, 1990 shall attain compliance by the threshold dates established herein. Every owner or operator of a Fixed Facility shall be required to show compliance with this rule by obtaining a Critical Materials Compliance Certificate appropriate for current operations. (7-1-93)

b. The following activities shall require a new application to the Panhandle Health District 1 to determine compliance with this rule: (7-1-93)

i. Establishing a new use that ~~would~~ could qualify as a Fixed Facility. (~~7-1-93~~)()

ii. Remodeling, operating changes, or expansion of an existing Fixed Facility which would modify the type or quantity of Critical Materials Use Activity. (7-1-93)

iii. Changes in the location or method of use, storage, manufacture or handling of Critical Materials in any Fixed Facility. (7-1-93)

iv. A change in ownership or addition of new Critical Materials meeting the quantity thresholds established by this rule at a Fixed Facility. (7-1-93)

c. Any CMCC granted is specific to that action and the application filed therefore. Subsequent actions, meeting the criteria set by Subsection 400.03.b., shall require separate plan reviews and approvals to obtain compliance. (7-1-93)

d. Fixed Facilities in existence prior to September 18, 1990, shall comply with reporting requirements established herein on or before one (1) year from September 18, 1990, and shall implement secondary containment systems, on or before three (3) years from September 18, 1990. Upon proper showing by an applicant that good cause exists, the director may authorize a compliance agreement which allows the applicant up to one (1) additional year to install secondary containment systems. (7-1-93)

e. All businesses over the Rathdrum Prairie Aquifer in Kootenai County are subject to inspection in order to determine if they are governed by this rule. ()

04. Application Requirements of Fixed Facilities Engaged in Critical Materials Use Activities.
Each applicant for a Critical Materials Compliance Certificate must provide: (7-1-93)

a. Sufficient information to allow the Director to determine the type, quantity, and physical state of all Critical Materials that are used, stored, manufactured, or handled at the Fixed Facility location. The Director may require the applicant to provide a complete list of Critical Materials present at the Fixed Facility. (7-1-93)

b. Sufficient information about the Fixed Facility to allow classification in accordance with the Standard Industrial Classification system of the U.S. Department of Commerce. (7-1-93)

c. Building plans and site development drawings showing compliance with the secondary containment requirements established by this rule. Such plans shall also provide confirmation that the secondary containment methods are compatible with the materials to be contained and that Critical Materials at the Fixed Facility are isolated from storm water or other surface waters on the site. The Director may require that any such plans be certified by a licensed engineer. The required building and/or site plans shall show at least the following: (7-1-93)

i. Location of Critical Materials in buildings and other designated site areas. (7-1-93)

ii. Location of Key Box if required by the local fire chief. (7-1-93)

iii. Location of NFPA 704 placards if required by the local fire chief. (7-1-93)

d. Proof of contact and resultant acknowledgment from the agencies named below which have codes, standards, and/or rules which must be met by the applicant with respect to handling of Critical Materials. The Director will designate the agencies needing contact for each Fixed Facility based upon information provided by the applicant. (7-1-93)

- i. Local Fire Department. (7-1-93)
- ii. Local Emergency Planning Committee. (7-1-93)
- iii. Kootenai County Department of Planning and Zoning. (7-1-93)
- iv. Kootenai County Building Department. (7-1-93)
- v. Applicable City Building Department. (7-1-93)
- vi. Applicable City Planning and Zoning Department. (7-1-93)
- vii. Bureau of Pesticides, Department of Agriculture. (7-1-93)
- ix. Department of Environmental Quality. (7-1-93)
- x. Idaho Department of Water Resources. (7-1-93)

e. An opportunity for Panhandle Health District 1 to perform an inspection to assure compliance with secondary containment criteria previously approved through the plan review. If approved, and the agency review and reporting checklist (Subsection 400.04.d.) has been completed, a CMCC will be issued. The Director may delegate site inspection duties to officials of a cooperating agency. (7-1-93)

f. Payment of the review fee for CMCC issuance established by Resolution of the Board in order to reimburse costs of administering the Critical Materials program. (7-1-93)

05. Performance Standards for Fixed Facilities. Each Fixed Facility, as defined in this rule, shall conform to the following performance standards: (7-1-93)

a. Shall construct and maintain a secondary containment system for all Critical Materials. Said secondary containment system shall be designed to prevent infiltration of any Critical Materials into the ground in the event that they are released from their original storage containers. (7-1-93)

b. The secondary containment system and methods must be non-reactive and resistant to the materials to be contained and must isolate the Critical Materials at the Fixed Facility from storm water, other surface waters on the site, and from reactive critical materials present in the same Fixed Facility. (7-1-93)

c. Secondary containment systems must be sized to contain at least one-hundred and ten percent (110%) of the volume of the largest container, or ten percent (10%) of the aggregate volume of all containers, whichever is greater, in any containment area within a Fixed Facility. (7-1-93)

d. The owner or operator of any Fixed Facility shall report the presence of any Critical Materials Use Activities to the responsible local, state, and federal agencies as required by statutes, rules, and provisions of this rule. (7-1-93)

e. Any spilling, leaking, emitting, discharging, escaping, or leaching of any Critical Material into the secondary containment system or the environment must be reported to Panhandle Health District 1 or the local fire department immediately upon discovery of the release. (7-1-93)

f. Should conflict arise among the applications of local, state rules, and federal regulations regarding Critical Materials Use Activities, the rule that provides the greatest degree of protection to the Aquifer shall prevail,

except where legal preemption of regulatory authority by state or federal agencies may require application of a different standard of protection. (7-1-93)

g. Each Fixed Facility shall be subject to biennial inspection to verify continued compliance with these rules. A fee for such inspection may be set by the Board. ()

06. Violation. Any owner or operator of a Fixed Facility shall be deemed to have violated this rule if: (7-1-93)

a. A Fixed Facility is operated or if Critical Materials Use Activities are conducted on any site without first procuring a Critical Materials Compliance Certificate or if changes are made to Critical Materials Use Activities at a Fixed Facility as set forth in Section 400.03.b. without reapplying for a CMCC for the Fixed Facility. (7-1-93)

b. An owner or operator of a Fixed Facility submits knowingly false or incomplete reports to the Panhandle Health District or other responsible agencies or officials concerning the nature or quantity of Critical Materials present at a Fixed Facility governed by this rule. (7-1-93)

c. An owner or operator fails to implement or maintain secondary containment of Critical Materials at a Fixed Facility as required by this rule. (7-1-93)

d. An owner or operator fails to comply with time and reporting standards for any Critical Materials Use Activities or fails to report any discharge of Critical Materials into the secondary containment system required by this rule. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

511. CONTAMINANT MANAGEMENT RULES IN THE BUNKER HILL SUPERFUND SITE OPERABLE UNIT #3 INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA, SHOSHONE AND KOOTENAI COUNTIES, IDAHO

01. Purpose. The purpose of these Rules is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the Institutional Controls Administrative Area of the Bunker Hill Superfund Site Operable Unit #3 (OU-3) provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management requirements to preclude the release and migration of Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to Area residents, communities, to workers involved in Area project work, and to environmental receptors. Further, it is the purpose of these Rules to complement existing land use regulations and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these Rules. These Rules will rely upon procedures and provisions applicable to the Institutional Controls Program set forth in Section 500 of these rules. Differences identified in Sections 511 and 512 of these rules, shall be deemed applicable only to the lands encompassed by OU-3. ()

02. Implementation Policy and Standards. Implementation policy and standards which pertain to the interpretation and enforcement of these Rules or to the documentation of compliance with these Rules have been developed by PHD and are available for inspection and/or copying at cost at the PHD office, 114 West Riverside Avenue, Kellogg, Idaho. ()

03. Administrative Appeals. Persons may be entitled to appeal final PHD actions authorized under this chapter, pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

04. Definitions. The following terms shall be construed throughout Sections 511 and 512 of these rules, in a manner consistent with these definitions: ()

a. Agricultural Land. Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities. ()

b. Applicant. Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit. ()

c. Access Restrictions. Physical barriers such as fences, barricades, curbs, barrier rocks, trenches, etc. that provide restricted access by vehicles, pedestrians, and animals to contaminated areas. ()

d. Barrier. Any physical structure, material or mechanism which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, crushed aggregate/gravel, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place. ()

e. Board. The Board of Health of the Idaho Public Health District No. 1. ()

f. B.O.P. Barrier Option Plan. a plan which will be provided by an Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. ()

g. Building Construction. Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard. ()

h. Building Renovation. Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard. ()

i. CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act. ()

j. Commercial Property. Retail, wholesale and secondhand businesses; public and common use areas; public buildings; and undeveloped properties accessed by a maintained road or street and zoned for commercial development as of the date of promulgation of these Rules. ()

i. Type I. Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.) ()

ii. Type II. All other Commercial Property. ()

k. Contaminants. Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than one thousand (1000) ppm or concentrations of arsenic equal to or greater than one hundred (100) ppm. ()

l. Developed Recreation Area. Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds outside the city limits of incorporated communities in the Coeur d'Alene River corridor as defined in Subsection 512.0.5.s. of these rules. The Developed Recreation Areas of the Trail of the Coeur d'Alenes includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads, exclusive of all undeveloped areas within the trail right of way. ()

m. Director. The Director of the Idaho Public Health District No. 1. ()

n. Disposal. The placement of Contaminants into an authorized repository. ()

o. Environmental Office. PHD office in Kellogg, ID. ()

p. Excavation – Any digging, breaching or disruption of soil not including cultivation of Agricultural ()

Lands and gardens or mining activities regulated under other state and federal programs which may release or expose Contaminants to the environment. ()

q. Health Officer. The Director or designee. ()

r. Hearing Officer. An attorney, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these Rules. ()

s. Institutional Controls Administrative Area. The Area designated by the Administrative Area Map in Appendix 2 which includes areas of mining, milling, and smelting related contamination in the South Fork of the Coeur d'Alene River corridor from its headwaters to the confluence with the North Fork Coeur d'Alene River and from the confluence of the North and South Fork to the mouth of the River and its confluence with Coeur d'Alene Lake including adjacent floodplains, tributaries, and fill areas. The Area also includes the Trail of the Coeur d'Alenes inside and outside the administrative boundary indicated on the map in Appendix 2 except that portion within the exterior boundaries of the Coeur d'Alene Indian Reservation. The Area does not include any area within OU-1 and OU-2 (Box) which has a separate ICP, or any other area excluded under this rule. The Area also includes areas in the Coeur d'Alene River corridor, as defined above, outside the administrative boundary indicated on the map in Appendix 2 where testing has verified that Contaminants related to mining, milling, and smelting have come to lie and remediation is required. ()

t. ICP. The Institutional Controls Program for the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. ()

u. ICP Permit. The Contaminant management authorization for projects subject to these Rules. ()

v. Infrastructure. Facilities such as trails, roads, streets, highways, bridges; storm water, drinking water, and wastewater systems; flood prevention systems including dikes and levees; and utilities including electrical power and natural gas systems. ()

w. Large Project. A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants. ()

x. Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is required. ()

y. PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). ()

z. PUD. Planned Unit Development. ()

aa. Record of Compliance. The record maintained by the PHD pursuant to Section 523 of these rules for Small Projects. ()

bb. Release. Any excavation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Contaminants into the environment. ()

cc. Residential Property. Property used by private individuals or families as a residence, and undeveloped properties accessed by a maintained road or street and zoned for residential development as of the date of promulgation of these Rules. ()

dd. Sensitive Populations. Pregnant women and children up to twelve (12) years old. ()

ee. Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. ()

ff. Trail of the Coeur d'Alenes. All Developed Recreation Areas and undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch right of way. ()

gg. Working day. Monday through Friday, but shall not include any legal holiday recognized as such by the State of Idaho. ()

05. Statement of Intent. It is the intent of the PHD to work with local governments, the State of Idaho, the United States Environmental Protection Agency, Federal Land Management Agencies (Bureau of Land Management, USDA Forest Service), Coeur d'Alene Tribe, and private parties in managing Contaminants within the regulated Institutional Controls Administrative Area by way of an ICP. These Rules establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Rules do not address financial liability for Contaminant management resulting from a failure of a CERCLA remedy due to a natural disaster. These Rules govern management of Contaminants by: ()

a. Requiring ICP permits and requiring barriers for certain construction and excavation activities; ()

b. Licensing contractors, utilities, and state and local government entities which may disrupt or construct Barriers, or otherwise disturb Contaminants; ()

c. Adopting performance standards; ()

d. Inspecting for project compliance as required; ()

e. Regulating the movement and disposal of Contaminants; ()

f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons or the environment to Contaminants; ()

g. Maintaining records of ICP activities. ()

06. Additional Provisions by PHD. In conjunction with these Rules it is the intent of the PHD to provide, depending on project size and complexity and at the discretion of PHD: ()

a. Technical assistance and soil testing; ()

b. Health screening and intervention; ()

c. Readily available repositories for disposal of Contaminants; ()

d. Clean material to restore Barriers for Small Projects; ()

e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil; ()

f. Health and safety information and education to licensees and the public; ()

g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate; ()

h. A database tracking system to assist the public, lenders, and prospective purchasers of property within the Institutional Controls Administrative Area; ()

i. Guidelines for managing Contaminants. ()

512. APPLICATION OF REGULATIONS; INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA. These Rules shall apply to the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. These Rules shall not apply to the direct operations of the United States Environmental Protection Agency

including directing, supervising, and inspecting project work or on lands owned or otherwise under the jurisdiction, custody and control of the Coeur d'Alene Tribe or the Federal Land Management Agencies such as the USDA Forest Service and the Bureau of Land Management. These Rules shall not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail of the Coeur d'Alenes pursuant to the requirements of the Consent Degree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606).

()

01. Standards Adopted.

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a. Except as otherwise provided in Section 512 of these rules, contaminant management is required on all properties within the Institutional Controls Administrative Area including properties that have been remediated; properties tested and scheduled for remediation; properties not yet tested; and properties testing below action levels in the top eighteen (18) inches where Large or Small Projects may disturb Contaminants below eighteen (18) inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below eighteen (18) inches) by the Applicant where a project may result in deep excavations; and replacement and repair of remediation Barriers in accordance with Subsection 512.02 of these rules; or other management activities. Contaminant Management on Residential Properties and Commercial Properties existing as of the date of promulgation of these Rules and requiring remediation, but not yet remediated will not require construction of final barriers in accordance with Subsection 512.02 of these rules, by the owner, but may require dust, erosion, health and safety and temporary cap controls to prevent further migration onto lands of others. Final barrier construction will be the responsibility of the state of Idaho and United States Environmental Protection Agency if needed. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by PHD.

()

b. Developed Recreation Areas with surface soil containing lead concentrations greater than seven hundred (700) ppm lead and one hundred (100) ppm arsenic shall be capped pursuant to Subsection 512.02.c. of these rules.

()

c. Agricultural and undeveloped land within the Institutional Controls Administrative Area are exempt from these Rules unless excavation and grading activities such as soil transport off site or development by the owner or his/her agents on these lands is likely to result in the release or migration of Contaminants from these lands to adjacent non-agricultural or undeveloped areas.

()

d. All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications.

()

e. No new PUD or subdivision containing concentrations of Contaminants exceeding one thousand (1000) ppm lead or one hundred (100) ppm arsenic shall be developed without Contaminant management.

()

f. No person shall conduct, except in accordance with these Rules, any activity within the Institutional Controls Administrative Area which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, or run-on or run-off from stormwater or in any other manner on properties tested and requiring remediation and on properties not yet tested within the Institutional Controls Administrative Area

()

02. Barriers: Construction and Maintenance Required.

()

a. The minimum Barrier construction requirements for Residential and Type I Commercial Properties are as follows:

()

i. All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the requirements of Subsection 512.02.d. of these rules.

()

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of

Subsection 512.01.a. of these rules, shall restrict access to such adjacent property. ()

b. The minimum Barrier construction requirement for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ()

c. The minimum Barrier construction requirement for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ()

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators. ()

e. Soil and crushed aggregate/gravel imported for barrier material shall contain less than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials shall exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic. ()

f. Barriers shall be maintained and repaired to original construction specifications. ()

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers shall be disposed of in designated repositories or as directed by PHD. ()

03. ICP Permits Required. ()

a. Permits shall be required for Large Projects and Building Renovations. ()

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the PHD. ()

c. A single annual permit covering a specific list of projects may be obtained from the PHD by entities eligible under Section 531 of these rules, at the beginning of each year's construction season. ()

5143. -- 519. (RESERVED).

520. PERMIT APPLICATION AND ADMINISTRATION.

01. Application for ICP Permit. Application for an ICP Permit shall be made in writing at the Kellogg office of the District. Application shall be on forms provided by the District. (3-20-97)

02. Required Applicant Information. All Applicants shall provide the following information when applying for an ICP Permit with the District: (3-20-97)

a. Name, address and telephone number of the Applicant and the property owner. (3-20-97)

b. Location of the work and whether the work is being done on private or public property, or both. (3-20-97)

c. Description of work. The description must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the District if one has not been provided pursuant to the permit process. (3-20-97)

d. Dates work will be started and completed. (3-20-97)

- e. Such other information as the District shall require. (3-20-97)

03. District Requirements for Projects. If the work is to be performed within the jurisdiction of a city or county government which has not adopted standards and a permitting process consistent with these rules, the District may require, as appropriate for a particular project, the following: (3-20-97)

- a. Large Projects: (3-20-97)

i. Name, signature, license number, seal and address of engineer, geologist, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto; (~~3-20-97~~)(_____)

ii. Copies of other government authorizations, permits or permit applications (i.e. County or City) and the supporting documents and materials pertaining thereto; (~~3-20-97~~)(_____)

iii. A key map showing location of tract with reference to surrounding properties including owners, streets and city boundaries; (3-20-97)

iv. Existing and/or proposed zoning; (3-20-97)

v. North arrow and scale; (3-20-97)

vi. Site plan showing dimensions, boundaries, existing and/or proposed structures; (3-20-97)

vii. Date of current property survey; (3-20-97)

viii. Standardized sheet size; (3-20-97)

ix. Copies of existing and/or proposed restrictions or covenants; (3-20-97)

x. List of ordinance variances required or requested (PHD or local government); (3-20-97)

xi. Requested or obtained design waivers or exceptions; (3-20-97)

xii. Payment of fee; (3-20-97)

xiii. Identification of surrounding water courses, flood plains (floodway and one hundred (100) year floodplain), wetlands, and environmentally sensitive areas on-site and within two hundred (200) feet; (3-20-97)

xiv. Soil information as required to determine levels of contamination; (3-20-97)

xv. Location and description of all existing Barriers on-site and bordering the site; (3-20-97)

xvi. Barrier Option Plan, as required; (3-20-97)

xvii. Existing rights-of-way and/or easements on and adjacent to the tract (i.e. streets, utilities); (3-20-97)

xviii. Existing and proposed contour intervals based on U.S.G.S. datum, contours to extend fifty (50) feet beyond the project site borders (additional distance may be required in the case of subdivisions, PUD's and special use permit situations), contour intervals shall be as follows: for sites with grades slopes of less than three percent (3%) - one (1) foot intervals; for sites with grades slopes of three percent (3%) to ten percent (10%) - two (2) foot intervals; for sites with grades slopes over ten percent (10%) - five (5) foot intervals; (~~3-20-97~~)(_____)

xix. Existing system of site drainage and of any larger tract or basin of which the site is a part; (3-20-97)

- xx. Drainage calculations; (3-20-97)
- xxi. Existing and proposed utility infrastructure locations; (3-20-97)
- xxii. Locations of existing and/or proposed activities on-site (i.e. lawn, garden, landscaping areas, pathways, driveways, storage areas, structure locations, etc.); (3-20-97)
- xxiii. Soil erosion and sedimentation control plan if surface is to be disturbed; (3-20-97)
- xxiv. Dust control plan if surface is to be disturbed; (3-20-97)
- xxv. Plan for transporting Contaminants, means for transportation, proposed disposal site, and proposed route; (3-20-97)
- xxvi. Access control plan for construction period; (3-20-97)
- xxvii. Construction schedule; (3-20-97)
- xxviii. Contractor bonding information; (3-20-97)
- xxix. Health and safety plan. (3-20-97)
- b. Building Renovations:** (3-20-97)
 - i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect or contractor, as applicable, involved in preparation of the application or any materials or documents pertaining thereto; (~~3-20-97~~)()
 - ii. Type of contaminated material to be handled (i.e. soil, insulation etc.); (3-20-97)
 - iii. Dust control plan; (3-20-97)
 - iv. Access control plan; (3-20-97)
 - v. Worker precautions (health and safety plan); (3-20-97)
 - vi. Transportation information, including means, method of containment of material, and proposed disposal site; (3-20-97)
 - vii. Contractor bonding information; (3-20-97)
 - viii. Construction schedule. (3-20-97)

04. Use of Discretion on Requirements by District. The District may, at its own discretion, waive certain application requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no instance shall a waiver violate the intent of this rule and/or the Record of Decision for the relevant Operable Unit. (~~3-20-97~~)()

05. Site Inspection or Waiver When Permit Required. Work which requires a permit shall not commence until a site inspection has been made or waived by the District and a permit has been issued. (3-20-97)

06. Time Specifications. The permit shall provide that all work be completed and the permit shall be void if work is not commenced and completed within the times specified for the type and kind of permit as approved by Resolution of the Board. An extension of time may be granted by the District upon a showing of good cause. (3-20-97)

07. Other Inspections and Requirements. All permits granted pursuant to this Rule remain subject to such other inspections and requirements prescribed by state or local governments. (3-20-97)

08. Work Involving Public Right-of-Way. If the permit involves work within any public right-of-way, the appropriate agencies ~~with~~ must be notified of the work by the entity receiving the permit. (~~3-20-97~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

522. PERMIT REVOCATION OR STOP WORK ORDER.

Any Permit may be revoked or a Stop Work Order may be issued, without notice by the District, for non-compliance with or violation of any of the provisions of this chapter or any requirement or limitation of the Permit. If a Permit is revoked, the District may take such steps as are necessary to eliminate any danger from contamination, including completion of work by the District. The Applicant, contractor and/or Owner may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the District to obtain compliance. The District will endeavor to provide written notice, but reserves the right to act summarily to protect public health and the environment. (~~3-20-97~~)(____)

523. RECORD OF COMPLIANCE.

A Record of Compliance for Small Projects which documents compliance with the performance standards established by these rules will be entered into the database tracking system based upon an inspection requested of PHD by the property owner or tenant. The Record signifies the property owner or tenant was informed of and provided with applicable performance standards and guidelines and materially complied with the same. (~~3-20-97~~)(____)

524. -- 529. (RESERVED).

530. CONTRACTOR LICENSING.

01. License Required. Any contractor performing Large Projects, Building Renovation or transportation or disposal of Contaminants within the Site or the Institutional Controls Administrative Area which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the District. There will be no charge for a contractor's license. It shall be unlawful for a contractor to work on a project requiring an ICP permit without a current contractor's license issued by PHD. A contractor's license will not be required of an owner working on his or her own property. (~~3-20-97~~)(____)

02. Training. In order to obtain a contractor's license from the District, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the District and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the procedures and standards that will protect themselves and the public from the Contaminants. The District will create and administer the test. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. (3-20-97)

03. Bonding. Any contractor whose license has been revoked by the District within the past three (3) years must, as a condition of reinstatement and maintaining the status of a licensed contractor, be bonded in the minimum amount of two-thousand dollars (\$2000). Said bond shall be at least five percent (5%) of the cost of any contract the contractor is engaged in whichever is greater. Said bond shall be in a form approved by the District and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the District may be utilized in lieu of a bond. The District may establish a bonding program for all contractors, if deemed necessary to carry out these Rules. (~~3-20-97~~)(____)

04. Suspension or Revocation of License. (3-20-97)

a. Upon a showing that a licensee has violated any provision of these Rules, or has violated any other

health or building code within the boundaries of the Site or Institutional Controls Administrative Area, suspension or revocation of license may be imposed. Suspension may be made by any District health officer. Revocation may be made by the Director upon recommendation of the District health officer. Notification of suspension or revocation must be in writing. No suspension may be made for more than thirty (30) days without approval of the Director. Revocation of license may be made by the Director upon a showing of good cause. (3-20-97)(____)

b. Appeal. Suspension or revocation may be appealed by the licensee to the Board in writing within thirty (30) days of receipt of notice of suspension or revocation. Appeal shall stay the suspension or revocation unless the Director makes a finding that such stay is likely to present a health risk to a person or persons. Appeals shall follow the procedures set forth in Section 020 of these rules. (3-20-97)

c. Any decision by the Board pertaining to a suspension or revocation of a license shall be made only after a licensee has been accorded an opportunity for hearing at which the licensee has a right to appear and be heard, to be represented by counsel, to testify, to present evidence, to call witnesses and to rebut any evidence presented. A transcribable recording of all such hearings shall be made and retained for at least six (6) months. Such hearing may be conducted by a hearing officer designated by the Board or by the Board itself. (3-20-97)

d. If a license is revoked, the contractor may, upon payment of any cleanup or remediation costs related to past work, reapply for reinstatement of license after one (1) year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied. (3-20-97)

531. LICENSES FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.

Upon a demonstration that supervisory employees of a public utility or government entity (city, county, special purpose district, or state of Idaho) have participated in an education program approved by, or provided by, the District, a utility company or government entity may receive an annual license which will allow their employees to ~~make Excavations~~ perform excavation and grading operations without obtaining individual ~~Contaminant management ICP~~ permits. This license may be granted by the District and will require that the utility comply with performance standards and all other regulations contained herein or adopted by Resolution of the Board. All supervisory employees involved in and responsible for excavations ~~and grading operations~~ shall have participated in a District approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. Entities licensed under this section shall maintain a log of all excavations and grading operations on a form approved by the District. Such logs ~~will~~ shall be forwarded to the District on a regular basis determined by the District. All licensees shall telephone the Shoshone or Kootenai County one-call locating service, as appropriate, prior to any excavation or grading operations. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with this rule. This license may also be revoked as provided in ~~the prior~~ Subsection 530.04. (3-20-97)(____)

532. -- 539. (RESERVED).

540. PERFORMANCE OF WORK.

01. Completion of Work. All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants. (3-20-97)

02. Work Delayed by Applicant. If the work is unduly delayed by the Applicant, and if the public interest reasonably so demands, the District shall have the authority, upon twenty-four (24) hours' written notice to the ~~permittee~~ Applicant, to complete the work to the extent that the Barrier is restored and any hazardous material covered or removed. The actual cost of such work by the District (including legal fees), plus fifteen percent (15%) as an overhead charge, shall be charged to and paid by, the Applicant and/or the Owner. (3-20-97)(____)

(BREAK IN CONTINUITY OF SECTIONS)

542. APPROVAL OF ALTERNATIVE STANDARDS.

Any person aggrieved by the substantive requirements of these rules or the performance standards, may appeal these requirements by providing a written request for approval of an alternative standard. The appeal shall be accompanied by an engineering report indicating why the appealing party should be relieved of the requirement for compliance or why the requested alternate standard is appropriate. At the Applicant's expense, the District may consult with its own engineer to confirm the applicability of these ~~regulations~~ rules to the proposed project. The District health officer may approve an alternate standard where such approval does not jeopardize the public welfare or existing Barriers. The decision of the District health officer shall be in writing, stating the reasons therefore. (3-20-97)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~544. -- 549. (RESERVED).~~

Section 550 has been moved and renumbered to Section 901

~~551. -- 559. (RESERVED).~~

Section 560 has been moved and renumbered to Section 902

~~561 -- 569. (RESERVED).~~

~~570. EFFECTIVE DATES.~~

~~01. Temporary Rule Effective Date. The Board, finding that these rules are necessary to protect the public health, safety and welfare, passes these rules as temporary rules pursuant to section 67-5226, Idaho Code, and these rules, except as otherwise provided, shall be effective April 17, 1995. (3-20-97)~~

~~02. Other Effective Date. Any rule applicable to licensing of contractors, public utilities and government entities shall be effective as of January 1, 1996. (3-20-97)~~

~~57144. -- 899. (RESERVED).~~

900. ADMINISTRATIVE PROCEDURES, EXCEPTIONS, PENALTIES, AND ENFORCEMENT.

01. Responsibility of Permit Applicant. It shall be the responsibility of any person applying for, or required to apply for, a permit required by this Code, to show affirmatively, by all reasonable means, that his undertaking complies with this Code or with any related rules, statutes, or ordinances. (7-1-93)

02. Permit Revocation. Any permit or permission, actual or implied, granted by the Health Officer or his predecessors may be revoked, for cause, by written notice sent to the permit holder or his agent. Any person, association, or corporation who continues to act under such permit or permission actual or implied, more than ten days after the sending or delivery of notice of revocation shall be presumed to be in violation of this code and subject to the penalties provided herein. (7-1-93)

03. Variance Standards. A variance may be granted only upon an affirmative showing by an applicant that ~~the~~ a unique and undue hardship is caused by a physical characteristic of a site that is not of the applicant's making and that approval of the variance would not be contrary to the public interest or to the purposes of the Code. (7-1-93)(____)

04. Variance Procedures. (7-1-93)

a. An applicant for a variance shall obtain a Variance Application Form from Panhandle Health

District 1 and, after completing the application form, shall return the application to the Environmental Office. The Variance Application shall require the applicant to provide, in addition to information required by the application form itself, the following: (7-1-93)

i. An accurate site plan showing development of the site in question, present and proposed, depicting all features relevant to the variance request. The Director, or his designee, shall identify information necessary to proper processing of the request if information other than that normally required must be supplied. The applicant shall describe the current and proposed use of the site in question. (7-1-93)

ii. A narrative statement addressing the efforts, including consideration of design alternatives, which the applicant has undertaken to comply with the rule from which a variance is sought. (7-1-93)

iii. A narrative statement explaining the nature of the hardship, if any, imposed by literal compliance with the rule in question. (7-1-93)

iv. A narrative statement explaining the effects of the requested variance on the interests of adjoining landowners and/or of the public at large. (7-1-93)

v. A narrative statement detailing what use could be made of the site in question if the requested variance were not granted. (7-1-93)

b. The completed Variance Application shall be returned to the Environmental Office accompanied by an ~~fifty dollar (\$50)~~ initial filing fee as established by the Board. The completed application shall be submitted to the Panhandle Health District 1 Hearing Officer who shall determine whether, on its face, it sets forth a colorable claim for a variance from the Code. If the Hearing Officer determines that the application does not set forth a colorable claim for variance, he shall return the application to the applicant with a written explanation of the action taken. Said initial determination and the accompanying explanation shall be forwarded to the Board which shall act upon the Hearing Officer's initial determination by affirming it or remanding it to the Hearing Officer for further proceedings. (7-1-93)()

c. If the Hearing Officer determines that the application presents a colorable claim for a variance, he shall return the application to the Environmental Office with instructions to prepare a notice of public hearing concerning the requested variance. The applicant shall pay an additional processing fee ~~of one hundred and fifty dollars (\$150)~~ if the Hearing Officer makes such a finding. Said fee may be adjusted as with all other Panhandle Health District 1 fees in accordance with a sliding scale coordinated with Federal poverty standards. (7-1-93)

d. The Environmental Office staff shall notify the applicant that his application has passed the initial screening and that the names and mailing addresses, on self-adhesive labels, of all owners of land located within three hundred (300) feet of the external boundaries of the site in question must be provided. Said names shall be provided or checked by a land title company or other business whose commercial purpose it is to provide such information. The applicant shall be solely responsible for the accuracy of such information. (7-1-93)

e. Using the mailing list provided by the applicant, notice of public hearing shall be sent by first class mail and posted on the site in question in a conspicuous manner. The Environmental Office shall maintain records verifying completion of the notification process. Mailing and posting shall be accomplished at least fifteen (15) days prior to the date of the hearing established by the Hearing Officer. (7-1-93)

f. Upon the appointed date, the Hearing Officer shall conduct a public hearing concerning the variance request. The applicant, Panhandle Health District 1 staff, interested members of the public, and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record in order that they may be associated with the taped record of the hearing. (7-1-93)

g. Upon completion of the hearing and compilation of the record in each application, the Hearing officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer may recommend that the application be approved, be approved with conditions, or that the application be

disapproved. His recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (7-1-93)

h. At its next regular meeting, or as soon as the application can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing by the Board. The Board may accept the recommendation of the Hearing Officer, may reverse the recommendation, or may modify the recommended decision for reasons to be found in the record. If the Board modifies or reverses the Hearing Officer's recommendation it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearings to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of Section 39-418, Idaho Code. (7-1-93)

~~**05. Penalties.** Any person, association, or corporation who shall violate provisions of this rule may be penalized as follows: (7-1-93)~~

~~**a.** Shall be subject to a penalty as set forth in Section 39-419, Idaho Code, or as otherwise provided by Section 39-117, Idaho Code. Each day of violation of a provision of this rule shall constitute a separate offense subject to cumulative punishment. (7-1-93)~~

~~**b.** May be subject to a civil court judgment enjoining violation of the rule and such civil penalties, costs, and fees as may be necessary to compel compliance. (7-1-93)~~

550901. APPEAL TO THE BOARD.

Any person, association, public or private agency or corporation aggrieved by application of a provision of these rules or by a decision of the Health Officer or the District may appeal to the Board pursuant to the provisions of Chapter 52, Title 67, and Chapter 4, Title 39, Idaho Code, and the following procedures: (3-20-97)

01. Filing Appeal. Any potentially affected party seeking relief under these rules must file such appeal or request to the Board in writing at the ~~Kellogg~~ office of the District in the county where regulated activity is undertaken within thirty (30) days of the Health Officer's or District's decision, or of such other action from which relief is sought. The appeal must set forth the reasons for appeal and request a hearing, if one is desired. If a hearing is not requested, the decision will be made based on the records of the District, the information in the appeal or request for relief, and any other written information filed with the Board by the Health Officer or District. A copy of any document filed with the Board shall be sent to the other party immediately. (3-20-97)()

02. Appeals Forwarded to Hearing Officer. All appeals shall be forwarded to a Hearing Officer for evaluation. If a hearing has been requested, the Hearing Officer shall designate a time and place for hearing and provide Notice to the appealing party and the Health Officer or District. (3-20-97)

03. Hearings. If hearing is requested, the Hearing Officer shall, upon the appointed date for hearing, conduct a hearing concerning the appeal or request for relief. The appealing party, District staff, interested members of the public and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record. (3-20-97)

04. Completion of Hearing and Compilation of Record. Upon completion of the hearing and compilation of the record, the Hearing Officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer's recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (3-20-97)

05. Board Review of Hearing Recommendations. At its next regular meeting, or as soon as the recommendation can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing from the Board. The Board may accept the recommendation of the Hearing Officer, reverse the recommendation, or may modify the recommended

decision for reasons found in the record. If the Board modifies or reverses the Hearing Officer's recommendation, it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearing to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action, adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of section 39-418, Idaho Code. (3-20-97)

~~569~~902. VIOLATION AND ENFORCEMENT.

Violation of any provision of these rules shall be subject to the following enforcement procedures: (3-20-97)

01. Violation of Rules. Any person, association, or corporation, or the officers thereof, violating any of the provisions of these rules shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. (3-20-97)

02. Liability of Violator. In addition to fine and imprisonment, any person, association, or corporation, or the officers thereof found to be in violation of these rules shall be liable, by civil action or restitution, for any expense incurred by the District in enforcing this act, or in removing or terminating any nuisance or health hazard. (~~3-20-97~~)(____)

03. Other Action. Any person, association, or corporation, or the officers thereof shall additionally be subject to civil court action, including an injunction or restraining order, and to such penalties, costs, or fees as may be necessary to compel compliance. (3-20-97)

04. Successive Days in Violation. Each successive day in violation shall be considered a separate offense and shall be subject to ~~cumulative~~ individual penalties for each separate offense. (~~3-20-97~~)(____)

~~904~~3. -- 999. (RESERVED).

IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-0601

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 54-2105, 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 18, 2006.

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 rulemaking is necessary to reflect current practices and clarify processes and procedures. The rule changes revise continuing education requirements, update practice standards, clarify the code of conduct, establish a timeframe for the filing of complaints, and include various housekeeping changes.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Ewing, Management Assistant, (208) 332-8588.

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 25, 2006.

DATED this 14th day of August 2006.

Karen Ewing
Management Assistant
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
Boise, Idaho 83707
Phone: (208) 332-8588
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 46-0101-0601

005. INCORPORATION BY REFERENCE.

01. Documents Incorporated. The following documents are incorporated herein by reference in accordance with the provision of Section 67-5229, Idaho Code. (3-30-01)

a. The Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), adopted January 1, ~~1999~~ 2005. (~~3-30-01~~)(____)

b. The Educational Commission for Foreign Veterinary Graduates Information for Graduates of Colleges of Veterinary Medicine Outside the United States and Canada (ECFVG), adopted May 1, 2000. (3-30-01)

c. The American Association of Veterinary State Boards' (AAVSB) Program for the Assessment of Veterinary Education (PAVE), adopted August 15, 2002. (____)

b. The Educational Commission for Foreign Veterinary Graduates Information for Graduates of Colleges of Veterinary Medicine Outside the United States and Canada (ECFVG), adopted May 1, 2000. (3-30-01)

006. -- 009. (RESERVED).

010. LICENSE.

01. Qualifications for License. Applicants for license to practice veterinary medicine and surgery in Idaho shall be of good moral character and reputation and have: (7-1-97)

a. Graduated from an accredited school of veterinary medicine as defined by Section 54-2103(2), Idaho Code; or (3-30-01)

b. The board will accept as eligible for licensure: (3-30-01)

i. Any graduate of a veterinary school, college or university outside of the United States and Canada that fulfills the current requirements for foreign veterinary graduates as set forth by the Educational Commission for Foreign Veterinary Graduates or the American Association of Veterinary State Boards. A graduate enrolled in the foreign graduate program would be considered a student as defined by Section 54-2104(2)(b), Idaho Code. (~~3-30-01~~)(____)

ii. Any graduate of an unaccredited veterinary school who has completed a curriculum of not less than four (4) academic years in a veterinary medical program approved by the board and satisfactorily completed clinical education equivalent in purpose, content, experience and length to the clinical training received by students in an accredited veterinary medical program. Such clinical education needs to have been obtained pursuant to a formal affiliation agreement between the unaccredited veterinary school and an accredited veterinary medical program. Qualified graduates applying for licensure under Subsection 010.01.b.ii. may be issued a temporary permit to practice veterinary medicine under the professional supervision of an actively licensed Idaho veterinarian. Such temporary permit may be renewed for up to three (3) years by paying the current active license renewal fee established by Section 014, provided that during this three (3) year period, the applicant has applied to complete the evaluated clinical experience requirements of the ECFVG program. The evaluated clinical experience requirements of the ECFVG program require that the applicant, following graduation from an unaccredited veterinary medical program, has: (3-30-01)

(1) Completed one (1) additional academic or full year of evaluated clinical experience at an AVMA accredited or approved college of veterinary medicine and the supervising veterinarian has reported to ECFVG that the candidate has demonstrated competence equal to, or exceeding that expected of a new graduate of an accredited college of veterinary medicine; or (3-30-01)

(2) Successfully passed the Clinical Proficiency Examination (CPE) approved by the ECFVG. (3-30-01)

c. If at the end of the three (3) year period, the applicant has not received his ECFVG certificate or the results of the Clinical Proficiency Examination have not been made known to him, the expiration date for his temporary permit may be extended until a copy of his ECFVG certificate has been received or the results of the Clinical Proficiency Examination have been made known to him and the applicant's completed license application can be reviewed by the board at their next regularly scheduled meeting. (3-30-01)

02. Application. Application for license may be obtained from the board office. (7-1-97)

03. Examination. The national licensing examinations for licensure to practice veterinary medicine and surgery in Idaho are: (3-30-01)

a. National licensing examinations, developed by the National Board Examination Committee or its designee, that include, but are not limited to: (3-30-01)

i. The National Board Examination (NBE) and Clinical Competency Test (CCT), which may be taken at any time and as many times as necessary; (3-30-01)

ii. As of November 1, 2000, the North American Veterinary Licensing Examination (NAVLE), which may be taken at any time and as many times as necessary. (4-5-00)

b. The jurisprudence examination, as prepared by the board or its designee, and which may be taken more than once, at three (3) month intervals. (3-18-99)

i. The jurisprudence exam will be an open book exam, consisting of twenty-five (25) to fifty (50) questions on the Idaho veterinary law, and rules, and the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA). (3-30-01)

ii. The jurisprudence exam, a copy of Title 54, Chapter 21, Idaho Code, a copy of the rules of the board, IDAPA 46.01.01, "Rules of the Idaho State Board of Veterinary Medical Examiners," and a copy of the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA) shall be sent to each applicant along with the application for licensure. (3-30-01)

iii. After November 1, 2000, applicants who have taken their national examinations prior to this date and have not taken and passed the Clinical Competency Test (CCT) may, in lieu of a passing score on the CCT, provide the documentation specified by Section 54-2107(5), Idaho Code. (3-30-01)

04. Passing Score. (7-1-97)

a. A passing score for the national licensing examinations shall be calculated and reported by the National Board Examination Committee, or its designee, or the American Association of Veterinary State Boards or its designated test vendor. If such a score is not available, the passing score shall be as reported by the National Board Examination Committee, or its designee, or the American Association of Veterinary State Boards or its designated test vendor and shall be considered equal to or greater than one point five (1.5) standard deviation below the mean score of the examination. (3-30-01)

b. A passing score for the jurisprudence examination shall be ninety percent (90%) or such score as deemed appropriate by the board. All application materials and fees shall be at the board office, with the exception of the Clinical Competency Examination results when an applicant is applying for a temporary permit or a license without having taken the Clinical Competency Examination, before the jurisprudence examination shall be graded. (3-30-01)

05. Review of Examination. (7-1-97)

a. An applicant wishing to review the results of the jurisprudence examination shall make a written request to the board within thirty (30) days of receipt of the jurisprudence examination results. (7-1-97)

b. The review shall be conducted no later than sixty (60) days from the date of the written request,

shall not exceed two (2) hours in length, and no written materials or any reproductions shall be removed from the review premises. (7-1-97)

- c. The review shall take place at the office of the board during normal business hours. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

012. LICENSE RENEWAL/RETURN TO ACTIVE STATUS.

01. Renewal. An “active” or “inactive” veterinary license may be renewed by submission of the completed and signed annual renewal form prescribed by the board, submission of a continuing education report as outlined in Subsection 015.03.d. for the appropriate hours of continuing education, and payment of all applicable fees. (4-5-00)

02. Return to “Active” License Status. A veterinarian whose license is on inactive status shall not practice veterinary medicine and surgery in this state. A licensee may convert from “inactive” license status to “active” license status by: (4-5-00)

- a. Making written application to the board on an application form prescribed by the board. (7-1-97)

b. Providing ~~thirty (30) hours of~~ evidence of completion of the required continuing education credits ~~earned in the three (3) fiscal years (July 1 to June 30) immediately preceding application for activation of an “inactive” license.~~ (3-30-01)(____)

- c. Taking and passing the jurisprudence exam with a score of ninety percent (90%) or better. (3-18-99)

d. Providing verification of license in good standing from the licensing boards in each state where the applicant has been licensed to practice veterinary medicine since converting to inactive status or from the American Association of Veterinary State Board’s Veterinary Information Verifying Agency (VIVA). (3-30-01)

- e. Paying all applicable fees. (4-5-00)

03. Late Renewal. Within thirty (30) days of the date a license expires due to nonrenewal, the license may be reinstated by paying the established late fee, the renewal fee, and by fulfilling the requirements of Section 54-2112, Idaho Code. Once a license has expired, a veterinarian may not practice veterinary medicine until the license has been reinstated or until the veterinarian has applied for and received a new license. (4-5-00)

04. Change of Address. It is the responsibility of each licensed veterinarian to notify the board office of any change of address. Failure to receive a renewal form from the board shall not constitute an excuse for failure to pay the renewal fee and fulfill the requirements of Section 54-2112, Idaho Code. (4-5-00)

05. Military Waiver. License renewal fees for licensees on active duty with the armed services of the United States may be waived one (1) time, not to exceed the longer of three (3) years or the duration of a national emergency. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

015. MANDATORY CONTINUING VETERINARY EDUCATION.

01. Statement of Purpose. It is of primary importance to the public that veterinarians continue their veterinary education throughout the period of their active practice of veterinary medicine. These rules establish the

minimum continuing veterinary education requirements necessary for veterinarians to maintain a license to engage in the practice of veterinary medicine in the state of Idaho. (7-1-97)

02. Approved Courses. (3-30-01)

a. Approved courses include: (3-30-01)

i. Those courses and providers listed on the American Association of Veterinary State Board's Continuing Education Registry; and (3-30-01)

ii. Those courses and providers approved by the board. (3-30-01)

b. Board approval for a continuing education course may be obtained by sending a written request to the board office and enclosing copies of the course agenda, dates, times, locations, and requested number of credit hours in management and veterinary medicine. Copies of the sign-in and sign-out sheets for each approved course are to be supplied to the board office following completion of the course by the course provider. (3-30-01)

03. Education Requirements. (7-1-93)

a. Minimum Requirement. Each active veterinarian in the state of Idaho shall complete a minimum of ~~thirty twenty~~ (32) credit hours of accredited continuing veterinary education activity in each and every ~~three~~ two (2) year period following the date of his or her admission to the practice of veterinary medicine in this state. ~~Each active member admitted to the practice of veterinary medicine before July 1, 1990 shall complete a minimum of thirty (30) credit hours of accredited continuing veterinary education activity in each and every three (3) year period beginning July 1, 1990.~~ (7-1-93)()

b. Credit Requirements. The following are the minimum and maximum credits that may be earned for each reporting period and the number of credits that may be obtained by participating in on-line or correspondence courses. (7-1-93)()

i. A minimum of ~~twenty-one~~ fourteen (14) hours of continuing education in veterinary medicine, surgery, and dentistry. (3-18-99)()

ii. A maximum of ~~nine~~ six (6) hours of continuing education in management. (7-1-93)()

iii. Veterinarians may obtain a maximum of fifteen (15) credit hours through approved on-line or correspondence courses. ()

c. Attendance Period. The attendance period shall be based upon the fiscal year (July 1 to June 30). (3-18-99)

d. Report. Each veterinarian subject to these rules shall file a written report, on a form prescribed by the Board, as provided in this rule. (7-1-93)

i. Content of Report. The report shall set forth the record of the veterinarian's compliance with these rules during the attendance period and shall contain at least: (7-1-93)

(1) A list of the courses attended; (7-1-93)

(2) The dates of attendance; (7-1-93)

(3) The sponsoring organization; (7-1-93)

(4) The hours attended, rounded to the nearest one-half (1/2) of an hour; and (7-1-97)

(5) The veterinarian's signature, under penalty of perjury. (7-1-93)

ii. Place of Filing. The report of compliance with the continuing veterinary education requirement shall be filed with the secretary of the board. (3-30-01)

iii. Time of Filing. The report shall be filed on, or prior to, July 1 in the year the veterinarian is required to complete the continuing education requirement. (7-1-93)

04. Exemptions. Upon a showing of good cause by a licensee to the board, the board may exempt such licensee from any, all or part of the continuing education requirement or may grant an extension of the three (3) year period. Written requests for exemptions from continuing education credits shall be sent to the board office. (3-30-01)

05. Credit for Attendance. Continuing veterinary education credits may be earned by attending approved courses in continuing veterinary education. (7-1-97)

a. Credits. One (1) credit hour shall be given for each fifty (50) minutes actually spent by the active member in attendance at an accredited, domestic or foreign, course. No credit shall be given for: (7-1-97)

i. Time spent in introductory remarks, coffee and lunch breaks, business meetings or other activities not involving the educational aspects of the course. (3-18-99)

ii. Any course attended before admission to practice veterinary medicine in Idaho. (7-1-93)

iii. Journal and magazine articles, videos or correspondence courses, unless specially approved by the board. (7-1-97)

b. In cases of panel presentations, credit shall be calculated by multiplying the actual number of course hours by two (2) and dividing by the number of panel members involved. (3-18-99)

c. Carryover Credit. No credit for attending approved courses in continuing veterinary education shall be applicable to any reporting period other than that during which the credit is actually earned. (7-1-97)

016. ELIGIBILITY EVALUATION - NATIONAL EXAMINATION.

01. Eligibility Requirements. Effective July 1, 2000, all applicants applying to the board for eligibility evaluation for the national examination shall: (3-30-01)

a. If not previously graduated from an accredited school of veterinary medicine at the time of application, be within six (6) months of expected graduation date. (3-30-01)

b. Have qualified for licensure in this state as outlined in Section 54-2107, Idaho Code and Subsection 010.01; (3-30-01)

c. Have fulfilled the licensing requirements, as outlined in Section 54-2107, Idaho Code and Subsections 010.02, 010.03, and 010.04 with the exception of a passing score on the national examination(s); (3-30-01)

d. Have completed the national examination(s) application prepared by the National Board Examination Committee (NBEC) or its designee and supplied by the board, NBEC or its designee; (3-30-01)

~~**e.** Have submitted to the board the national examination application fee established by the NBEC in the form of a money order, certified check or cashier's check and made out to the National Board Examination Committee;~~ (3-30-01)

~~**f.** And have paid to the board the state application and license fee as outlined in Subsection 014.01.a. and the national examination processing fee, as outlined in Subsection 014.01.g.~~ (3-30-01)

02. Application and Fee Deadlines. For applicants applying to the board for eligibility evaluation for the national examination(s), application and fee deadlines for both the national examination(s) and for the state

licensure examination shall be ninety (90) days prior to the first date of each national testing window established by the National Board Examination Committee or its designee. No candidate will be permitted to take the national examination(s) until their completed national and state applications have been received and approved, and the established fees paid. (3-30-01)

03. Determination of Eligibility. Upon the board's determination of an applicant's eligibility for the national examination(s), the board shall notify the applicant of his eligibility to take the national examination(s) and shall transmit the applicant's eligibility information and examination fee to the National Board Examination Committee or its designee. Any candidate not included on the board's eligibility list for the current test window will be ineligible to take the national examination(s) during that test window. (3-30-01)

04. Authorization to Test and Scheduling. The National Board Examination Committee or its designee will supply authorization to test, letters, and scheduling permits to eligible candidates. Scheduling permits will contain instructions pertaining to establishing, changing or canceling a test appointment through a centralized registration center (Customer Service Call Center or CSCC). (3-30-01)

a. Candidates will be responsible for scheduling their own testing date, time and location through the Customer Service Call Center, CSCC. Candidates who desire to change the date, time or location of the testing appointment may do so without financial penalty until noon on the fifth business day prior to the scheduled appointment. All times are based upon the local time of the center where the candidate is scheduled to test. (3-30-01)

b. Candidates must take the national examination(s) within the established test window or their authorization to test will expire and their national examination(s) and processing fees forfeited. (3-30-01)

c. Candidates desiring to retake the national examination(s) during a subsequent test window must have their eligibility reconfirmed by the board to the National Board Examination Committee or its designee and pay the established national examination(s) and processing fees. (3-30-01)

05. National Examination(s) Scoring and Reporting. (3-30-01)

a. The passing score for the national examination(s) shall be the criterion referenced passing score established by the National Board Examination Committee or its designee, or by the American Association of Veterinary State Boards or its designated test vendor. (3-30-01)

b. The board will report scores on the national examination(s) to the individual candidates. (3-30-01)

i. No candidate shall be permitted to review the national examination(s) or receive copies of his answers to the examination(s). (3-30-01)

ii. For candidates failing the national examination(s), upon request, a diagnostic breakdown according to the examination's overall content areas will be supplied. (3-30-01)

iii. Any appeals by candidates regarding examination(s) scores will be managed by and between the candidate and the board. (3-30-01)

iv. Any rationales and analyses provided by the National Board Examination Committee beyond the diagnostic information will be at the board's written request and at the candidate's expense. (3-30-01)

c. A copy of the candidate's initial score report will be supplied to the board by the National Board Examination Committee. Subsequent score reports to other boards must be requested by the candidate through the American Association of Veterinary State Boards, or their designee at the candidate's expense. (3-30-01)

017. -- 099. (RESERVED).

100. CERTIFICATION OF VETERINARY TECHNICIANS.

Beginning July 1, 2000, Any person representing himself as a veterinary technician, licensed veterinary technician, registered veterinary technician, or certified veterinary technician, shall hold a valid, unexpired certificate to practice

veterinary technology in the state of Idaho. ~~(3-30-01)~~(____)

01. Application for Certification -- Contents -- Examinations. An individual desiring to be certified as a veterinary technician shall make written application to the board upon a form furnished by the board. A complete application shall be valid and maintained at the board office for a period of one (1) year, contain the applicant's notarized signature, and include: (3-30-01)

a. A notarized copy of a birth certificate, current passport, or valid driver's license proving that the applicant is eighteen (18) years of age or more. (3-30-01)

b. Notarized affidavits issued during the year preceding certification from two (2) individuals, personally acquainted with the applicant, attesting to the fact that the applicant is of good moral character. (3-30-01)

c. Documentation of Education/Training/Experience as follows: (3-30-01)

i. A notarized copy of a diploma or certificate verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association; or (3-30-01)

ii. A notarized copy of a diploma or certificate verifying graduation from a veterinary technology program equivalent to a program accredited by the American Veterinary Medical Association, or from another college or institution approved by the board; or (3-30-01)

iii. Notarized verification of having been awarded a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or (3-30-01)

iv. If a foreign veterinary graduate, notarized verification of having been awarded a D.V.M. or V.M.D. degree or equivalent in a program of veterinary medicine from a foreign school of veterinary medicine or the veterinary department of a foreign university or another college or institution that is approved by the board; ~~or;~~ ~~(3-30-01)~~(____)

~~**v.** Notarized verification of having been licensed, registered, or certified to practice as a veterinary technician in another state under one (1) of the conditions outlined in Subsection 100.01 and has been actively practicing veterinary technology in that state for the past two (2) years; or (3-30-01)~~

~~**vi.** Applicants for certification prior to July 1, 2002, may provide verification from an actively licensed veterinarian in good standing in the United States or Canada that the applicant has. (3-30-01)~~

~~**(1)** Been employed by them for at least two (2) years as a full-time veterinary assistant under the veterinarian's supervision or as a licensed, registered or certified veterinary technician and is recommended to the board by the employing veterinarian or veterinarians; or (3-30-01)~~

~~**(2)** In a situation where the supervising veterinarian is not the employer, i.e. animal shelters, has been working under the supervision of a veterinarian for at least two (2) years as a full-time veterinary assistant or as a licensed, registered or certified veterinary technician and is recommended to the board by the supervising veterinarian or veterinarians. (3-30-01)~~

d. Verification of a criterion-referenced passing score reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards on the Veterinary Technician National Examination (VTNE) or other national examination(s) approved by the American Association of Veterinary State Boards or its designated test vendor or by the board. If such a score is not available, the passing score shall be as reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards or by the board and shall be considered equal to or greater than one and five-tenths (1.5) standard deviation below the mean score of the examination. (3-30-01)

i. The VTNE or other national examination(s) approved by the American Association of Veterinary State Boards or its designated test vendor or by the board may have been taken at any time. (3-30-01)

ii. Scores for the VTNE or other national examination(s) approved by the American Association of Veterinary State Boards or its designated test vendor or by the board are to be provided to the board by the Professional Examination Service or its designee or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards. (3-30-01)

e. A passing score of at least ninety percent (90%) correct on the Idaho Veterinary Technician Jurisprudence Examination. (3-30-01)

02. Application for Certification -- Fee -- Deadline -- Validity. (3-30-01)

a. A completed application, other required documents, and first year's certification fee in the amount established by the board shall be received at the board office by the first day of January or June. (3-30-01)

b. The board will review applications and issue certifications in January and June of each year. Veterinary Technician Certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters CVT. If an applicant is found not qualified, the board shall notify the applicant in writing of such finding and grounds therefor. An applicant denied certification may request a hearing pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code. Any applicant who is denied certification shall be allowed the return of the certification fee portion of the application fee. (3-30-01)

c. Any applicant taking and passing the Idaho Veterinary Technician Jurisprudence Examination and not wanting to be certified at the next review by the board shall be allowed the return of the certification fee portion of the application fee only. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

102. CERTIFIED VETERINARY TECHNICIAN MANDATORY CONTINUING EDUCATION.

In order to best serve the citizens of Idaho and their animals, each certified veterinary technician shall be required to complete a minimum of ~~twenty-one~~ fourteen (214) hours of ongoing continuing education in the field of veterinary technology in each and every ~~three~~ two (32) year certification period following the date of his certification. A maximum of ~~six~~ four (64) credit hours of continuing education in management may be used toward the fulfillment of the CE requirement. Approved courses, attendance period, content of report, exemptions, and credit for attendance are the same as outlined in Section 015 of these rules, mandatory continuing veterinary education with the exception of Subsection 015.03.d.i.(5), which shall be the veterinary technician's signature, under penalty of perjury, and Subsection 015.03.b.iii, which shall be a maximum of ten (10) hours credit for on-line or correspondence courses. No credit for attending approved courses in the field of veterinary technology shall be applicable to any reporting period other than that during which the credit is actually earned. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

106. TIME FOR FILING COMPLAINT.

01. Limitation. A complaint must be filed within one (1) year after the occurrence of any alleged unlawful or unethical conduct as set forth in Section 105 of these rules. If the alleged unlawful or unethical conduct is of a continuing nature, the date of the occurrence of said conduct shall be deemed to be any date subsequent to the commencement of the unlawful or unethical conduct up to and including the date on which the complaint shall have been filed if the alleged unlawful or unethical conduct continues. (____)

02. Receipt. Upon receipt of a complaint at the Board's office, the date of such receipt shall be noted thereon, and the date of notation shall be the date of filing. (____)

03. Sufficiency. A complaint shall be deemed to have met the timeliness requirement of Subsection 106.01 of these rules when the Board receives a written statement sufficiently precise to identify the conduct and to describe generally the conduct alleged to be unlawful or unethical. ()

1067. -- 149. (RESERVED).

150. VALID VETERINARIAN/CLIENT/PATIENT RELATIONSHIP.

An appropriate veterinarian/client/patient relationship will exist when: (7-1-97)

01. Responsibility. The veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has followed the instructions of the veterinarian. (7-1-97)

02. Medical Knowledge. There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept. (7-1-97)

03. Availability. The practicing veterinarian or designate is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. (~~7-1-97~~)()

151. UNPROFESSIONAL CONDUCT.

The Idaho Board of Veterinary Medicine hereby adopts the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association, as incorporated by Section 005 and Section 152, Code of Professional Conduct, of this chapter, as the definition of ethical and professional conduct for licensed veterinarians. (Sections 54-2103(40) and 54-2115(2), Idaho Code). Any violation of the Principles of the Veterinary Medical Ethics of the American Veterinary Medical Association or Code of Professional Conduct shall constitute unprofessional conduct. Unprofessional conduct includes but is not limited to: (3-30-01)

01. Violations of the Principles of Veterinary Medical Ethics. Any violation of the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association. (3-30-01)

02. Violations of the Code of Professional Conduct. Any violation of the Code of Professional Conduct. (4-5-00)

03. Unsanitary Methods or Procedures. Failure to apply sanitary methods or procedures in the treatment of any animal, contrary to the rules adopted by the board. (4-5-00)

04. Association With Illegal Practitioners. Shall include but not be limited to: (4-5-00)

a. Having a professional relationship or connection with, lending one's name to, or otherwise aiding and abetting any illegal or unlicensed practice or practitioner of veterinary medicine and the various branches thereof; (4-5-00)

b. Rendering professional service in association with a person who is not licensed and does not hold a temporary permit; or (4-5-00)

c. Sharing fees with any person, except a licensed veterinarian, for services actually performed. (4-5-00)

05. False Testimony. Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary medicine, surgery or dentistry. (4-5-00)

06. Gross Ignorance, Incompetence or Inefficiency. In determining gross ignorance, incompetence or inefficiency in the profession, the board may take into account all relevant factors and practices including, but not limited to, the practices generally and currently followed and accepted by the persons licensed to practice veterinary

medicine in this state, the current teaching at accredited veterinary schools, relevant technical reports published in recognized veterinary medical journals, and the desirability of reasonable experimentation in the furtherance of the art of veterinary medicine. (4-5-00)

07. Improper Supervision. Shall include but not be limited to: (3-30-01)

a. Permitting, allowing, causing or directing any individual to perform a duty, task or procedure that they are not qualified to perform. (3-30-01)

b. ~~Personally~~ Providing, ~~or~~ permitting, allowing, causing or directing any individual to ~~provide~~ ~~perform~~ inadequate anesthetic monitoring. ~~An anesthetized patient shall be continuously monitored until the patient is awake and in sternal recumbency.~~ Evidence of this monitoring shall be documented in written form and contained within the medical record. ~~(3-30-01)()~~

08. Association With Others. Accepting fees from the providers of animal services or products when referring clients to such providers. (4-5-00)

152. CODE OF PROFESSIONAL CONDUCT.

The board's code of professional conduct includes but is not limited to the following standards of conduct: (7-1-97)

01. Veterinarian/Client/Patient Relationship. A veterinarian shall not dispense or prescribe controlled substances, prescription or legend drugs except in the course of his professional practice and after a bona fide veterinarian/client/patient relationship as defined by rule Section 150 has been established. (3-30-01)

02. Health Certificate. A veterinarian shall not issue a certificate of health unless he has personal knowledge by means of actual examination and appropriate testing of the animal that the animal meets the requirements for issuance of such a certificate. (3-30-01)

03. DEA and Controlled Substance Registration. A veterinarian shall notify the board of the suspension, revocation, or voluntary surrender of his federal Drug Enforcement Administration (DEA) registration and his state controlled substance registration. (3-30-01)

04. Fraud. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine. (7-1-97)

05. Aiding or Abetting. A veterinarian shall not in any way aid or abet the unlawful practice of veterinary medicine. (7-1-97)

06. Ability to Practice. A veterinarian shall not practice veterinary medicine as to endanger the health and welfare of his patients or the public. A veterinarian shall not practice veterinary medicine if his ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance or as a result of any mental or physical disability. (7-1-97)

07. Conflicting Interests. A veterinarian shall not represent conflicting interests except by the express consent of all the parties after full disclosure of all the facts. A conflict of interest shall include, but not be limited to, accepting a fee from a buyer to inspect an animal for soundness and accepting a fee from the seller. (7-1-97)

08. Confidentiality. A veterinarian shall maintain a confidential relationship with his clients, except as otherwise provided by law or required by considerations related to public health and animal health. (7-1-97)

a. The information contained in veterinary medical records is considered confidential. It is unethical for a veterinarian to release this information except by court order or consent of the patient's owner or other caretaker at the time treatment was rendered. (3-30-01)

b. Without express permission of the practice owner, it is unethical for a veterinarian or certified veterinary technician to remove, copy, or use the medical records or any part of any record belonging to the practice or its owner for any purpose other than the business of the practice. ~~(3-30-01)()~~

~~09. **Verbal and Physical Abuse-Client.** A veterinarian shall not engage in verbal abuse or harassment of a client, nor shall a veterinarian physically threaten or assault a client or an employee. (7-1-97)~~

109. Physical Abuse-Patient. A veterinarian shall not physically abuse a patient or fail to conform to the currently accepted standards of care in the veterinary profession for any animal under his care. (7-1-97)

110. Preservation of Patient's Body. A veterinarian shall where possible preserve for twenty-four (24) hours the body of any patient which dies while in the veterinarian's care until the owner can be contacted, except as otherwise provided by law. The time of contact or attempted contact with the owner shall be documented in the medical record. The veterinarian shall be allowed to use the usual manner of disposal if the owner has not made pick-up arrangements within twenty-four (24) hours of the documented contact time. (7-1-97)()

~~12. **Consent Forms -- Surgery, Anesthesia and Euthanasia.** A veterinarian shall, except in an emergency situation, obtain written consent from the patient's owner or other caretaker before performing any surgical procedure, administering anesthetics and performing euthanasia. (3-30-01)~~

131. Consent for Transporting. A veterinarian shall obtain written consent from a patient's owner or other caretaker before transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent. (3-30-01)

142. Patient Record. A veterinarian shall maintain a patient record for each animal or herd that accurately reflects the veterinary problems and interventions and conforms to the standards set forth in Section 154. (3-30-01)

153. Supervision. A veterinarian shall provide the proper form of supervision required for persons to whom veterinary functions are delegated or assigned. (7-1-97)

164. Cooperation with Authorities. A veterinarian shall cooperate with authorities in the investigation of the incompetent, unethical or illegal practice of veterinary medicine by any individual including another veterinarian. (7-1-97)

175. Refusal to Render Services. A veterinarian shall have the right to refuse to render veterinary medical services for any reason, or refuse an owner's request to euthanize a healthy or treatable animal, ~~provided the cost of such treatment(s) is not overly excessive and prolonged, and shall have the right to refuse to admit as an in-patient to his hospital or clinic an animal that is not currently vaccinated.~~ (3-30-01)()

186. Improper Disposal of Controlled Substances. A veterinarian shall dispose of all controlled substances and the containers, instruments and equipment used in their administration in conformance with the requirements of the Code of Federal Regulations and the Idaho Board of Pharmacy law and rules. (3-30-01)

153. STANDARDS OF PRACTICE.

Veterinarians shall adhere to the guidelines for professional behavior set forth in the Principles of Veterinary Medical Ethics, Opinions and Reports of the Judicial Council, Section 152, Code of Professional Conduct, and the board's standards of practice as defined by rule. Standards of practice include but are not limited to: (3-30-01)

01. Practice Procedures. (7-1-97)

a. A licensed veterinarian shall exercise at least the same degree of care, skill, and diligence in treating patients that is ordinarily used in the same or similar circumstances by members of the veterinary medical profession of similar training and experience in the community in which he practices. (3-30-01)()

b. When the primary objective is to protect the animal patient's health and a professionally acceptable immunization procedure is being sought, a "clinical examination" of the animal by the veterinarian is required prior to each and every immunization procedure, except in the practice of large animal medicine where mass immunizations of animal herds is involved or when immunization is performed by the animal patient's owner. For the purpose of this subsection the definition of "Owner" in addition to ownership as defined by the laws of the ownership

of property, non-profit organizations dedicated to the care and treatment of animals shall be considered the owners of animals in their custody if such organizations are the primary care giver for the animal or if the true owner of such animal cannot be immediately determined. (4-5-00)

c. A veterinarian shall establish a valid veterinarian/client/patient relationship as defined by rule Section 150, prior to dispensing, using, prescribing, or selling any controlled substance or legend drug, or the prescribing of an extra-label use of any drug. (4-5-00)

d. A veterinarian dispensing or distributing any drug or medicine shall dispense or distribute such drug or medicine in good faith, within the context of a valid veterinarian/client/patient relationship as defined by Section 150, and shall, except in the case of any drugs and medicines that are in containers that bear a label of the manufacturer with information describing their contents and that are in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, 21 CFR Part 201.105, affix or cause to be affixed to the container containing the drug or medicine a label indicating: (3-30-01)

- i. The date on which such drug or medicine is dispensed; (4-5-00)
- ii. The name of the owner; (4-5-00)
- iii. The last name of the person dispensing such drug or medicine; (4-5-00)
- iv. Directions for use thereof, including dosage and quantity; and (4-5-00)
- v. The proprietary or generic name of the drug or medicine. (4-5-00)

02. Construction Standards. (7-1-97)

a. All premises shall meet the minimum requirements of construction, sanitation and cleanliness of the county health department in which the premise is located. (7-1-97)

b. All buildings and grounds shall conform to local building and zoning regulations. (7-1-97)

c. Fire prevention measures shall conform to state and local codes. (7-1-97)

d. All facilities shall provide for the effective separation of contagious and noncontagious cases. (7-1-97)

e. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (3-30-01)

03. Equipment Standards. (7-1-97)

a. All facilities shall be equipped with or have access to adequate diagnostic and therapeutic equipment and supplies to enable the veterinarian to provide the services offered. Adequacy of equipment and supplies will be consistent with and determined by the standards of veterinary medicine practiced by members of the veterinary medical profession in the community. (3-30-01)

b. All facilities and equipment used shall meet the manufacturers' label requirements for the storage of biologicals and supplies requiring temperature control. (7-1-97)

c. All facilities offering surgical services shall have properly sterilized surgical supplies and instruments. Autoclave equipment shall be properly utilized in those facilities where major surgery is conducted. (7-1-97)

d. All facilities shall have an adequate power supply to operate all equipment necessary to perform the services offered. (7-1-97)

- 04. Facility Sanitation Standards.** (7-1-97)
- a.** All facilities shall meet the requirements of the state department of health and local health departments pertaining to sewage, waste disposal, and the disposal of dead animals. (7-1-97)
 - b.** All areas of the building and grounds shall be kept free of refuse. (7-1-97)
 - c.** All facilities shall maintain a sanitary environment to avoid sources and transmission of infection including a means to isolate animals with a highly communicable disease. (7-1-97)
 - d.** Floors, countertops, tabletops, sinks, and similar equipment shall be maintained in a clean and sanitary condition. (3-30-01)
 - e.** Examination tables, surgery tables and all indoor, as well as outdoor, small animal compartments shall be constructed of sealed or non-porous material and cleaned and disinfected after each animal use. (4-5-00)
 - f.** All animal compartments shall be cleaned and disinfected at least once a day when in use, and be constructed in a manner to reasonably prevent injury to and/or loss of confinement for the animal. (7-1-97)
 - g.** Large animal compartments shall be cleaned at least once daily when in use. If communicable disease is present, the enclosure shall be disinfected after each use. (7-1-97)
- 05. Surgical Standards.** (7-1-97)
- a.** Surgical areas for aseptic procedures shall be either a separate room or have the capacity to be separated during use. (7-1-97)
 - b.** Surgical areas shall be provided with emergency lighting. (7-1-97)
 - c.** In the surgical areas, temperature and ventilation shall be maintained at adequate levels to ensure the animal's comfort, safety and sanitation. (7-1-97)
 - d.** All surgical areas shall be equipped with adequate resuscitation equipment. (7-1-97)
- 06. Anesthesia Standards.** (7-1-97)
- a.** All anesthetized animals shall be appropriately monitored and under supervision at all times. ~~An anesthetized animal shall be continuously monitored and observed until the patient is awake and in sternal recumbency.~~ Evidence of this monitoring shall be documented in writing in the medical record. (3-30-01)(____)
 - ~~**b.** If gas anesthesia is used, all anesthesia areas shall be equipped with an adequate waste gases discharge system to ensure the safety of humans and animals. (7-1-97)~~
 - eb.** Anesthesia areas shall be equipped with adequate ventilation systems that ensure the safety of humans and animals. (4-5-00)

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain daily medical records of the animals treated. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up unalterable electronic record. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (e.g., herd, litter, and flock) treated by a veterinarian. (3-30-01)(____)

- 01. Medical Records.** Medical records shall include but not be limited to: (7-1-97)

- a. Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
- b. Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
- c. Dates (beginning and ending) of custody of the animal. (7-1-97)
- d. A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
- e. Results and notation of examination, (i.e. temperature, pulse and respiration rate, laboratory data, etc.) condition, diagnosis suspected. (7-1-97)
- f. All medications, treatments, prescriptions or prophylaxis given, including amount and frequency for both inpatient and outpatient care. (7-1-97)
- g. Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
- h. Written anesthesia records. ()
- 02. Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for ~~any~~ each surgical procedure; involving use of general anesthesia, or euthanasia, shall be obtained, except in emergency situations, for each animal and shall be maintained on file with the practitioner. (~~3-30-01~~)()
- 03. ~~Preoperative/Postoperative Instructions.~~ ~~Instructions for preoperative and~~ Postoperative home-care instructions shall be provided in writing and be noted in the medical record.** (~~7-1-97~~)()
- 04. Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. (3-30-01)
- 05. Ownership of Medical Records.** Medical records are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive in a timely manner a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. Veterinarians shall secure a written release to document that request. (~~3-30-01~~)()
- 06. Radiograph Identification and Ownership.** All radiographs shall be labeled in the emulsion film to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A radiograph is the physical property of the hospital or the proprietor of the practice that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the board. Such radiographs shall be returned to the veterinarian who originally ordered them to be prepared within a reasonable time. (3-30-01)
- 07. ~~Statement of Charges~~ Estimates.** A veterinarian shall make available to each client a statement of charges written estimate on request. (~~7-1-97~~)()
- 08. Controlled Substances and Prescription or Legend Drugs.** A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code or 21 CFR Part 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only;" or "Caution: Federal law restricts this drug to used by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150. (3-30-01)

a. Records shall be kept that account for all dispensed and distributed controlled substances and prescription or legend drugs. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances or prescription or legend drugs. (3-30-01)

b. A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

i. Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and shall include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

d. Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

i. When prescription drug orders are to be distributed to the animal(s)' owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in his medical record and the original and one (1) copy shall be sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal(s)' owner or legal caretaker. (3-30-01)

ii. Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal(s)' owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

(1) When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal(s)' owner or legal caretaker. (3-30-01)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture telephone drug order blank. A copy of the written oral order shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (3-30-01)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed within seventy-two (72) hours by a written prescription drug order signed by the veterinarian. (3-30-01)

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Subsection 153.01.d. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

i. The clinic's name, address, and phone number; (4-5-00)

- ii. The name of the client and patient; (3-30-01)
- iii. The drug name and quantity; and (3-30-01)
- iv. The directions for use, including dosage and quantity. (3-30-01)
- g.** All controlled substances shall be stored and dispensed in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-30-01)

155. -- 199. (RESERVED).

200. EUTHANASIA TASK FORCE.

Pursuant to Section 54-2105(6)(l), Idaho Code, a Certified Euthanasia Task Force (CETF) is established for the purpose of training, examining, and certifying euthanasia agencies and euthanasia technicians. The CETF shall consist of no fewer than five (5) members appointed by the board. At its discretion, the board may appoint itself as the CETF. The membership of the CETF shall always include at least one (1) member of the board. New members shall be nominated by either the board or the CETF and be confirmed by the board. Applicants for a CETF position shall be certified euthanasia technicians (CETs) as defined by Section 54-2103(9), Idaho Code, and employed by a certified euthanasia agency as defined by Section 54-2103(8), Idaho Code, ~~working under the direct supervision of a licensed veterinarian;~~ or be an Idaho licensed veterinarian. (3-30-01)(____)

01. Term. Each member shall serve for two (2) years, at the pleasure of the board. A CETF member may be eligible for reappointment. If there is a vacancy for any cause, the CETF or the board shall nominate and the board shall confirm a successor to fill the unexpired term. (7-1-97)

02. Duties. The duties of CETF members shall include but not be limited to the following: (7-1-93)

- a.** Coordinate and provide euthanasia training classes as needed. (7-1-97)
- b.** Inspect and certify agencies. (3-30-01)
- c.** Review the applications, records, performance, methods and procedures used by agencies and persons seeking to be certified or to renew their certification as a Certified Euthanasia Agency, (CEA) or Certified Euthanasia Technician (CET). (3-30-01)
- d.** Conduct written and practical examinations for applicants applying for certification and authorize certification through the board. (3-30-01)
- e.** Recommend suspension or revocation of a certification when necessary. (3-30-01)

03. Compensation. Members of the CETF shall be compensated as provided by Section 59-509(n), Idaho Code. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

205. CERTIFIED EUTHANASIA TECHNICIAN.

~~The term Certified Euthanasia Technician (CET) means: A person employed by a certified euthanasia agency or working under the direct supervision of a licensed veterinarian, Section 54-2103(9)(a), Idaho Code, who has been certified by the board and registered with the Idaho Board of Pharmacy to possess and administer approved drugs. CETs shall have been instructed in the proper methods of humane euthanasia, security and record keeping as well as possess other skills as deemed necessary by the board. In order to possess and administer approved restraint drugs, law enforcement CETs shall have additional training in the proper use and handling of approved restraint drugs and equipment. (3-30-01)~~

01. Training and Examinations. The CETF or the board shall develop training sessions and materials that shall include, but not be limited to, the following topics: (3-30-01)

- a. Euthanasia: (3-30-01)
 - i. The theory and history of euthanasia methods; (3-30-01)
 - ii. Animal anatomy; (3-30-01)
 - iii. Proper animal handling to ease trauma and stress; (3-30-01)
 - iv. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)
 - v. Proper injection techniques; and (3-30-01)
 - vi. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)
 - vii. Examination. Following the euthanasia training, a written examination shall be given. Those passing the written examination will be eligible for the practical examination. (3-30-01)

- b. Remote Chemical Capture: (3-30-01)
 - i. An overview of remote chemical capture; (3-30-01)
 - ii. Description and basic mechanism of action of approved drugs; (3-30-01)
 - iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)
 - iv. Post-injection care; (3-30-01)
 - v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)
 - vi. Human safety; (3-30-01)
 - vii. Tactics and strategy; and (3-30-01)
 - viii. Delivery systems and equipment. (3-30-01)

02. Certification Standards. Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards. (3-30-01)

- a. Euthanize animals in the presence of one (1) or more CETF or board members: (3-30-01)
 - i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling; (3-30-01)
 - ii. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern; (3-30-01)
 - iii. CETs shall be able to properly perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, shall meet the standards listed in Subsection 205.02.a.iii.(1). Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subsection 205.02.a.iii.(3). (3-30-01)

(1) Intravenous Injections: The CET shall be able to properly and efficiently insert the needle into an animal's vein in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. IV injections in the cephalic vein shall be used on all dogs over the age of three (3) months unless the animal's physical condition or size makes this type of injection impossible, or the animal's behavior would make this type of injection a serious danger to the CET or handler. A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler(s). The handler(s) do not need to be CET(s), but the handler(s) should be trained in human safety and animal handling techniques; (3-30-01)

(2) Intraperitoneal Injections: The CET shall be able to efficiently insert the needle into the proper injection site in no more than two (2) attempts on ninety-five percent (95%) of the animals injected by this method. It is recommended that animals injected by this method be held or otherwise restrained by the handler until the animal is unconscious. If an animal cannot be held, it shall be placed into a cage with no other animals. The front of the cage shall be covered with cloth or other material that can keep the cage isolated from the normal activities in the euthanasia area. The animal shall be checked every five (5) minutes until death occurs. Intraperitoneal injections may be administered by a CET without a handler. (3-30-01)

(3) Intracardiac Injections: Intracardiac injection shall be performed only on an anaesthetized animal. CETs shall be able to efficiently insert the needle into the heart of an animal in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. Intracardiac injections may be administered by a CET without a handler. (3-30-01)

iv. No other injection procedures are permitted in any type of animal; (3-30-01)

v. Injections: (3-30-01)

(1) On all injections, the CET shall aspirate the syringe to determine if the needle is in the correct site; (3-30-01)

made; (2) For human safety, the cap shall be kept on the needle until such time as the injection is ready to be (3-30-01)

(3) The needle shall be of the size and length appropriate for the specific animal involved; and (3-30-01)

(4) The dosage of any approved drug used shall be no less than the minimum dosage recommended by the drug's manufacturer. (7-1-97)

vi. Oral administration of approved drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (3-30-01)

vii. Demonstrate an understanding of carbon monoxide-induced euthanasia chambers. (3-18-99)

b. Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept. The record shall contain the following information: (3-30-01)

i. A weekly verification of the drug stock on hand, signed by the CET; (3-30-01)

signed by the CET; ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle, (3-30-01)

iii. The species and approximate weight of each animal administered a drug; (3-30-01)

iv. The amount of the drug that was administered; (3-30-01)

v. The signature of the CET who administered the drug; (3-30-01)

- vi. A record of the amount of the drug wasted, if any, signed by the CET administering the drug; and (3-30-01)
 - vii. A record of any disposal of expired or unwanted approved drugs, other chemical agent(s) or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)
 - c. Demonstrate understanding and concern for the needs of individual animals: (3-18-99)
 - i. Once they have collapsed, injected animals shall be lowered to the surface on which they were being held at the time of injection. Injected animals shall not be permitted to drop or otherwise collapse without human support; (3-30-01)
 - ii. All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler(s). Handling includes all aspects of moving an animal from one (1) area to another; (3-30-01)
 - iii. The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)
 - iv. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-93)
 - d. Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within thirty (30) seconds after an IV or IC injection, within fifteen (15) minutes after an IP injection, or within sixty (60) minutes after an oral administration. If any animal does not show any of these signs within the designated time periods, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Terminal signs include no visual indications of breathing or heartbeat, lack of capillary response in the gums and/or lack of corneal or pupillary reflexes. Each animal shall be checked to verify death. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met: (3-30-01)
 - i. Rigor mortis; or (7-1-93)
 - ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, complete lack of capillary response in the gums, and complete lack of corneal, palpebral, and pupillary reflexes. (3-30-01)
 - e. Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)
- 03. Certification.** An individual shall not be certified as a CET until such time as he has demonstrated proficiency in the practical examination that shall be conducted following the successful passing of the written exam. Training courses and written and practical examinations will be given as needed. Certification and renewal training sessions and examinations will be conducted prior to July 1 of each year at a place selected by the CETF or the board. (3-30-01)
- a. An individual who has passed the written exam, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of ~~an Idaho licensed veterinarian or~~ a currently certified CET until such time as the next training course, practical exam and certification are conducted by a CETF or board member. (~~3-30-01~~)(____)
 - b. An individual who has not passed the written exam may not serve as a euthanasia technician or assistant. (3-30-01)
 - c. An individual who attends a training session and passes the written exam but fails the practical exam may serve on probation until the CETF member re-examines the individual. If the individual fails to pass the practical exam a second time and wishes to apply again, the individual shall attend the next regular training session

and written exam. (3-30-01)

d. Upon termination from an agency as defined in Section 204 of these rules, a CET shall not perform animal euthanasia until employed by another certified euthanasia agency as defined by Section 54-2103(8), Idaho Code. (3-30-01)

e. The agency shall notify the board office and/or a CETF member in writing within thirty (30) days from the date the CET's employment at that agency is terminated. (3-30-01)

f. If a CET is employed again within eighteen (18) months of his last certification, the CET and/or employer may request reinstatement and renewal of the CET's certification. If the certification has expired past the eighteen (18) months maximum, the CET may euthanize animals under the direct supervision of ~~an Idaho licensed veterinarian or a~~ currently certified euthanasia technician until such time as a CETF or board member can administer a written examination and authorize recertification. If a CET has not attended a euthanasia training in the three-year period preceding recertification, the CET may not be recertified and will need to reapply for certification. ~~(3-30-01)~~()

g. All certifications expire on July 1 of each year and are effective for no longer than twelve (12) months from the date of certification. (3-30-01)

04. Certification Renewal. Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the current training and certification fee prescribed by Section 014. (3-30-01)

05. Duties. The duties of a CET shall include, but are not limited to: (7-1-97)

a. Preparing animals for euthanasia; (7-1-97)

b. Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)

c. Ordering supplies; (7-1-93)

d. Maintaining the security of all controlled substances and other approved drugs; (3-30-01)

e. Directly supervising probationary CET(s); (7-1-97)

f. Reporting to the board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)

g. Humanely euthanizing animals; and (3-30-01)

h. Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent(s) or the containers, instruments and equipment used in the administration of approved drugs. (3-30-01)

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.02 - RULES AND MINIMUM STANDARDS GOVERNING EXTENDED EMPLOYMENT SERVICES

DOCKET NO. 47-0102-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 10, 2006.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to sections 33-2211 and 33-2303, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Wednesday, October 11, 2006 - 1:30 pm
JRW West Conference Room
700 W. State Street, Boise, Idaho

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Governor's budget for FY05 moved the funding for Extended Employment Services from the Department of Health and Welfare to the Idaho Division of Vocational Rehabilitation. Subsequently, the Department of Health and Welfare requested that IDAPA 16.04.04 be repealed as DHW was no longer responsible to oversee those services. These proposed rules will replace the repealed rules with current rules establishing IDVR as the agency with the authority to administer Extended Employment Services programs statewide.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To be in compliance with amendments to governing law or federal programs.

These rules will set standards for providers of Extended Employment Services, including work services and community supported employment. In addition, the rules will delineate program eligibility, required documentation of service planning, delivery, and the billing for the services.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted.

Extended Employment Services Specialists reviewed the reports from the Transition Task Force convened by IDVR to assist in the transition from Department of Health and Welfare to the Idaho Division of Vocational Rehabilitation.

Extended Employment Services Specialists met with both provider associations, the Idaho Association of Community Rehabilitation Programs and the Vocational Providers of Idaho. Members were provided with a copy of the previous rules and the current provider agreement. Comments and recommendations were requested by June 15th. IACRP provided written comments compiled at their meeting held in Ketchum, Idaho, May 9 and 10th, 2006 and representatives of IACRP participated in a conference call regarding their recommendations on May 22, 2006. VPI surveyed its members and reported the feedback during a meeting on June 2, 2006.

EESS received written comments, discussed rules in a conference call on May 23rd, and met with DD Council staff,

Marilyn Sword and Ron Enright, on June 2, 2006.

Regional Managers from the Idaho Division of Vocational Rehabilitation were invited to provide input during their meeting on May 31 and June 1, 2006.

The EESS met with the State Rehabilitation Council to present the Extended Employment program and to elicit input from council members which include the State Independent Living Council (SILC) and Idaho Parent's Unlimited (IPUL).

Individuals who had previously expressed interest in participating in discussions about the long term supports available in Idaho to individuals with disabilities were contacted directly and requested to provide recommendations and comments on previous rules.

On July 28th, a draft copy of the proposed rules was e-mailed to the provider associations and the DD Council with a notice that the rules would be on the State Board of Education agenda on August 10 and 11th. Each recipient was invited to comment on the draft of the rules and to participate in a public hearing to be scheduled after the State Board of Education Meeting. EESS received two phone calls with questions about staff training requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lynn Fisher at 883-8410.

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 25, 2006.

DATED this 10th day of August, 2006.

Karen L. Echeverria, Deputy Director
State Board of Education
650 West State Street
PO Box 83720, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 47-0102-0601

IDAPA 47, TITLE 01, CHAPTER 02

RULES AND MINIMUM STANDARDS GOVERNING EXTENDED EMPLOYMENT SERVICES

000. LEGAL AUTHORITY.

The following rules and minimum standards for extended employment services are made under sections 33-2211 and 33-2303, Idaho Code. (8-10-06)T

001. TITLE AND SCOPE.

01. Title. These rules govern the Extended Employment Services Program of the Idaho Division of Vocation Rehabilitation (IDVR) and are to be cited as IDAPA 47.01.02, Idaho Division of Vocational Rehabilitation, "Rules and Minimum Standards Governing Extended Employment Services." (8-10-06)T

02. Scope. In accordance with section 33-2203, Idaho Code, the Extended Employment Services Program of IDVR provides to eligible Clients services that are intended to increase opportunities for such Clients to work in their communities. IDVR will contract with providers that have been certified by IDVR to provide such services, as provided herein. (8-10-06)T

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of these rules. (8-10-06)T

003. ADMINISTRATIVE APPEALS.
Hearings and appeals shall be governed according to the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (8-10-06)T

004. INCORPORATION BY REFERENCE.
No documents are incorporated by reference. (8-10-06)T

005. OFFICE INFORMATION.

01. Office Hours. The IDVR administrative office is open from 8:00 am until 5:00 pm Monday through Friday. (8-10-06)T

02. Mailing Address. PO Box 83720, Boise, ID 83720-0096 (8-10-06)T

03. Street Address. Len B. Jordan Building, 650 W State Street, Room 150, Boise, Idaho. (8-10-06)T

04. Telephone. (208) 334-3390, Fax: (208) 334-5305 TDD: (208) 327-7040. (8-10-06)T

05. Internet Website. <http://www.vr.idaho.gov> (8-10-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-10-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS.
For the purpose of the rules contained in this chapter, the following terms and abbreviations are used as herein defined. (8-10-06)T

01. CARF. The Rehabilitation Accreditation Commission, an international accrediting body of employment services providers. The internet website for CARF can be found at <http://www.carf.org>. (8-10-06)T

02. Client. An individual residing in the state of Idaho who has applied for, and who is eligible to receive, Extended Employment Services from IDVR. A Client must be at least eighteen (18) years of age, unless such person is participating as part of a school work transition program, in which case such person must be at least sixteen (16) years of age. (8-10-06)T

03. Certified Extended Employment Services Provider. A community rehabilitation program services provider, sometimes referred to in these rules as a provider, that has been certified by IDVR to provide Extended Employment Services. (8-10-06)T

04. Extended Employment Services. Long term maintenance services that assist Clients in maintaining employment, or in gaining employment skills in preparation for community employment, or which provide assistance to adult Clients with disabilities within an industrial/business community setting, or a community rehabilitation program intended to maintain paid employment. Such services include individual supported employment, group supported employment, and work services. (8-10-06)T

05. Individual Program Plan. The plan of Extended Employment Services to be provided to individual Clients. (8-10-06)T

06. IDVR. The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the Extended Employment Services Program. (8-10-06)T

07. RSAS. Rehabilitation Services Accreditation Systems, a national accrediting body of vocational services providers. The internet website for RSAS can be found at <http://www.rsasnet.org>.

011. -- 099. (RESERVED).

100. CERTIFICATION OF PROVIDERS.

01. Certification Required. A provider must apply for and receive certification from IDVR, as provided herein, to provide Extended Employment Services to Clients. Such certification shall be for only the Extended Employment Services Program region in which such provider intends to provide services, and for which approval is granted by IDVR. (8-10-06)T

02. Application Process. A provider may apply for certification from IDVR for Extended Employment Services by submitting to the State Administrator for IDVR a formal written request specifying the region in which the provider intends to provide Extended Employment Services. The application must document that there is an unmet need in the particular geographic area the provider intends to serve, and must demonstrate that all of the criteria in subsection 100.04 of these rules has been met. The provider must include verification of current accreditation by CARF or RSAS. (8-10-06)T

03. Timeline. For purposes of these rules, the Extended Employment Services Program fiscal year is June 1 of a given year through May 31 of the next succeeding year. An application for certification for a fiscal year must be submitted on or before the first business day of April preceding the fiscal year for which certification is sought. A written decision on certification status in regard to such application will be issued by IDVR on or before the first business day of May preceding such fiscal year. If approved by IDVR, certification status for a provider becomes effective on June 1, the first day of such fiscal year. An application that is denied because there has not been demonstrated need for a new or additional provider in an Extended Employment Services region, or because there is insufficient funding to support a new or additional provider in an Extended Employment Services region, may be reconsidered during the course of a fiscal year if there have been significant developments in a region that require IDVR to add a new or additional provider after June 1. In such event, IDVR will give preference to denied applications based on date of application. (8-10-06)T

04. Criteria. IDVR will determine to grant or deny certification based on the following criteria: (8-10-06)T

a. The provider must be accredited by CARF or RSAS; (8-10-06)T

b. The provider must meet and maintain all the requirements for provider qualifications, specified in subsection 300 of these rules; (8-10-06)T

c. The IDVR state administrator must determine that there is a need for a new or additional provider in the Extended Employment Services Region to be served, or that a new or additional provider is necessary in an Extended Employment Services region in order to provide meaningful options for Client informed choice. In determining whether to grant or deny certification, the IDVR state administrator may consider satisfaction of Clients with services provided by current Certified Extended Employment Services Providers in the region; and (8-10-06)T

d. There must be sufficient funding available in IDVR's Extended Employment Services program budget for a new or additional provider in the Extended Employment Services region. (8-10-06)T

05. Grandfather Provision for Current Providers. Upon the effective date of adoption of these rules, providers that have been paid by IDVR for Extended Employment Services that were provided to Clients during the month of May, 2006, and which comply in all respects with Section 300 of these rules, shall be grandfathered and

deemed to be certified to provide Extended Employment Services in the region(s) in which they have provided services during such month. (8-10-06)T

06. Duration. Once certified, an Extended Employment Service Provider (including a provider that is grandfathered under subsection 100.04.05 of these rules) retains certified status unless or until the certification is terminated or revoked by IDVR. (8-10-06)T

101. -- 199. (RESERVED).

200. EXTENDED EMPLOYMENT SERVICES PROVIDER AGREEMENT.

01. Standard Form. Prior to providing Extended Employment Services, a Certified Extended Employment Services Provider shall enter into an annual Extended Employment Services Provider Agreement with IDVR which will specify the terms and conditions of the appointment. Such agreement shall be on a standard form approved by IDVR, after consultation with Certified Extended Employment Services Providers. Such agreement shall detail the provider requirements, services, scope of work, other special provisions, and fees. (8-10-06)T

02. Annual Agreement. This agreement must be signed prior to the beginning of the Extended Employment Services fiscal year by an authorized representative of the Certified Extended Employment Services Provider and the IDVR state administrator or a designee. (8-10-06)T

03. Subject to Revision. This agreement shall be entered into annually, and is subject to revision, as may be required by IDVR. (8-10-06)T

201. -- 299. (RESERVED).

300. PROVIDER QUALIFICATIONS.

A Certified Extended Employment Services Provider shall meet all of the following requirements: (8-10-06)T

01. Accreditation. Receive and maintain accreditation by CARF or RSAS. (8-10-06)T

02. Staff. Assure that all its employees and subcontractors providing Extended Employment Services: (8-10-06)T

a. Satisfactorily complete a criminal history background check, to be obtained by the provider; (8-10-06)T

b. Are not less than twenty-one (21) years of age, or if so, are not less than eighteen (18) years of age and have at least two (2) years work experience with people with disabilities; (8-10-06)T

c. Demonstrate the ability to deliver services as specified in the Individual Program Plan for each Client; and (8-10-06)T

d. Assure that within six (6) months of hire, all direct service employees and subcontractors who provide work services skill training or job coaching have had at least forty (40) hours of training directly related to vocational support for people with disabilities. Training must include all of the following topics: (8-10-06)T

i. Behavior technology, especially positive behavioral support; (8-10-06)T

ii. Instructional techniques; (8-10-06)T

iii. Strategies for dealing with aberrant or maladaptive behavior; (8-10-06)T

iv. Integration/normalization; (8-10-06)T

v. Functional impact of disabilities, particularly developmental disabilities and mental illness; and (8-10-06)T

- vi. Strategies for remediation and accommodation. (8-10-06)T

301. -- 399. (RESERVED).

400. TERMINATION OR REVOCATION OF PROVIDER STATUS.

IDVR may terminate or revoke the certified status of, and discontinue authorizing or purchasing services from, Certified Extended Employment Services Providers for actions including, but not limited to the following:

(8-10-06)T

- 01. Loss of Accreditation.** Failure to maintain accreditation from either CARF or RSAS; (8-10-06)T

02. Out of Compliance. The provider is determined by IDVR to be out of compliance with these rules, the Extended Employment Services Provider Agreement, or the applicable standards of the accrediting agency (either CARF or RSAS); (8-10-06)T

03. Business Practices. The provider is determined to be engaged in business practices that are inconsistent with sound fiscal practice; or (8-10-06)T

- 04. Client Rights.** The provider is determined to be in violation of Client rights. (8-10-06)T

401. -- 499. (RESERVED).

500. EXTENDED EMPLOYMENT SERVICES CLIENTS - REFERRAL AND ELIGIBILITY.

01. Referral. Each applicant to be a Client for Extended Employment Services under these rules will be referred by a Vocational Rehabilitation Counselor, employed by IDVR, who will provide the applicant with information on the services available from Certified Extended Employment Services Providers. (8-10-06)T

02. Eligibility. Extended Employment Services Specialists at IDVR will assess the eligibility of each applicant for Extended Eligibility Services. Eligible applicants must have a disability that falls into one of four categories described below, and such disability must constitute a barrier to such person maintaining paid employment without long term vocational support: (8-10-06)T

a. Developmental Disabilities. Pursuant to section 66-402, Idaho Code, a chronic disability of a person which appears before the age of twenty-two (22) years; and (8-10-06)T

i. Is attributable to impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one of those impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (8-10-06)T

ii. 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 (8-10-06)T

iii. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (8-10-06)T

b. Mental Illness. A person has been assessed by a qualified professional and been diagnosed under DSM-IV or later editions with schizophrenia, schizoaffective disorder, major affective disorder, delusional disorder or a borderline personality disorder and this psychiatric disorder must be of sufficient severity to cause a disturbance in role performance or coping skills in at least two of these areas on either a continuous or an intermittent (at least once per year) basis: vocational/academic, financial, social/interpersonal, family, basic living skills, housing, community, or health. (8-10-06)T

c. Specific Learning Disability. A disorder in one or more of the psychological processes involved in understanding, perceiving, or using language or concepts (spoken or written). A disorder which may manifest itself in problems related to speaking, reading, spelling, or mathematical calculations (or to a lesser extent, listening, thinking, or writing), and seriously limit two or more functional capacities (mobility, communication, self-care, self-direction, work tolerance or work skills). (8-10-06)T

d. Traumatic Brain Injury. A traumatically acquired insult to the brain that may cause physical, intellectual, emotional, social, and vocational changes. A closed head injury may be caused by a rapid acceleration/deceleration, as in a motor vehicle accident. An open head injury is visible insult and may be the result of an accident, gun shot wound, or other physical injuries. Immediate effects are loss of consciousness, loss of memory, or change in vision, strength, coordination, or sensory function. Anatomical abnormalities may be present, such as cerebral hemorrhage or skull fracture. Long term effects may include physical, cognitive, and psycho-social-behavioral-emotional impairments. (8-10-06)T

501. -- 599. (RESERVED).

600. COVERED SERVICES.

The Extended Employment Services that may be provided to Clients by Certified Extended Employment Services Providers are described below. These services typically follow the completion of other vocational rehabilitation services, such as vocational evaluation, job site development, and initial training at the job site. (8-10-06)T

01. Individual Community Supported Employment. Self employment or paid employment which is: (8-10-06)T

a. For a Client paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain that employment; (8-10-06)T

b. Conducted in a community or industry setting where persons without known paid work supports are employed; and (8-10-06)T

c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation. (8-10-06)T

02. Group Supported Employment. Self employment or paid employment which is: (8-10-06)T

a. For a group of no more than eight (8) Clients who are paid not less than minimum wage and who, because of their disability(ies), need ongoing support to maintain that employment; (8-10-06)T

b. Conducted in a variety of community and industry settings where the Clients have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting; (8-10-06)T

c. Supported by training and supervision needed to maintain that employment; and (8-10-06)T

d. Not conducted in the work services area of an Extended Employment Services Provider. (8-10-06)T

03. Work Services. The work services program utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on Certified Extended Employment Services Provider premises. (8-10-06)T

601. -- 699. (RESERVED).

700. EXCLUDED SERVICES.

Any other services provided by IDVR that are not described in subsection 600 of these rules shall not constitute

Extended Employment Services. Such excluded services include, but are not limited to, the following: (8-10-06)T

- 01. Vocational Evaluation; (8-10-06)T
- 02. Work Adjustment; (8-10-06)T
- 03. Job Site Development; or (8-10-06)T
- 04. Initial Training at the Job Site. (8-10-06)T

701. -- 799. (RESERVED).

800. SERVICE PROVISION.

01. **Services on Individual Program Plan.** Extended Employment Services for each individual Client must be based on the Individual Program Plan developed for such Client. (8-10-06)T

02. **Development of Individual Program Plan.** Those involved in developing the Individual Program Plan must include, but are not limited to, the following: (8-10-06)T

a. The Client. Efforts must be made to maximize the Client's involvement in the planning process by providing him or her with information and education regarding rights, and available options; and (8-10-06)T

b. The Client's legal guardian, if one has been appointed by the court; and (8-10-06)T

c. Certified Extended Employment Services Provider program staff, responsible for the implementation of the Individual Program Plan. (8-10-06)T

03. **Submission of the Individual Program Plan.** The Certified Extended Employment Services Provider must submit the Individual Program Plan to an Extended Employment Services Program Specialist using the standard format provided or approved by IDVR. The Extended Employment Services Program Specialist will either accept the Individual Program Plan as submitted, or may require revisions to the Individual Program Plan before acceptance. (8-10-06)T

04. **Timeline for Submission.** The Individual Program Plan must be submitted to an Extended Employment Services Program Specialist within thirty (30) days from the beginning of the provision of Extended Employment Services. No payment will be made for Extended Employment Services without receipt of the Individual Program Plan covering those Extended Employment Services. (8-10-06)T

05. **Revision.** The certified Extended Employment Services Provider must submit an updated Individual Program Plan for each Client to an Extended Employment Services Program Specialist at least annually. (8-10-06)T

06. **Progress Reports.** The Certified Extended Employment Services Provider must submit a progress report on each Client to an Extended Employment Services Program Specialist at six (6) month intervals. A standardized format provided or approved by IDVR must be used. (8-10-06)T

801. RECORDS.

01. **Client Files.** Certified Extended Employment Services Providers shall maintain individual Client files, which must include the following: (8-10-06)T

a. Referral information; (8-10-06)T

b. Eligibility; (8-10-06)T

c. Authorization for services; (8-10-06)T

- d. Contact information; (8-10-06)T
- e. Legal guardianship information; (8-10-06)T
- f. Individual Program Plan; (8-10-06)T
- g. Progress Reports; (8-10-06)T
- h. Documentation of service; (8-10-06)T
- i. Satisfaction measures; (8-10-06)T
- j. Releases of information; and (8-10-06)T
- k. Documentation that updates to Client information were provided to IDVR. (8-10-06)T

02. Storage. Files must be maintained for five (5) years from the date of discharge of the Client to whom the file pertains. (8-10-06)T

802. -- 899. (RESERVED).

900. PAYMENT FOR SERVICES.

01. Fee for Service. The IDVR State Administrator shall set the fees for covered services, after discussion with Certified Extended Employment Services Providers. Such fees shall be set forth in the annual Extended Employment Services Provider Agreement. Such fees shall be reviewed annually, and may be adjusted by IDVR to take effect at the beginning of the fiscal year. (8-10-06)T

02. Pre-Authorization. All Extended Employment Services must be pre-authorized by an Extended Employment Services Program specialist, and shall be set forth in the Individual Program Plan for each Client. (8-10-06)T

03. Billing Procedures. (8-10-06)T

a. Certified Extended Employment Services Providers must submit a monthly billing statement for each Client served, in a format approved by an Extended Employment Services Program Specialist and within timelines set forth in the annual Employment Services Provider Agreement. (8-10-06)T

b. Bills may only be submitted for Extended Employment Services that have been identified and accepted by IDVR, as set out in an Individual Program Plan. (8-10-06)T

c. All bills submitted by Certified Extended Employment Services Providers are subject to prepayment and post payment review. Documentation sufficient to support each payment item shall be available for review, and must be maintained for five (5) years from the date of service. The Certified Extended Employment Services Providers must submit copies of the documentation regarding the provision of such services upon written request from an Extended Employment Services Specialist. (8-10-06)T

04. Audits. IDVR may perform audits of billing records and other documentation submitted by Certified Extended Employment Services Providers in order to verify the accuracy of such records. (8-10-06)T

05. Denial/Revocation of Payment. IDVR may deny payment, or seek reimbursement or set-off for payments previously made, if the provider is not in compliance with these rules, the signed Employment Services Provider Agreement, or if the provider does not provide the services as set forth in a Client's Individual Program Plan. (8-10-06)T

901. -- 999. (RESERVED).

IDAPA 48 - GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - RULES OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

DOCKET NO. 48-0101-0601 - (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

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 54-3605 and 54-3610, 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 18, 2006.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Grape Growers and Wine Producers Commission is authorized by Section 54-3610, Idaho Code, to impose a tax and late fees on the failure to timely pay the tax. The Grape Growers and Wine Producers Commission has approved the taxes and fees set forth in this new title of rules for the 2007 state of Idaho fiscal year and, in compliance with Section 54-3610, Idaho Code, is promulgating this chapter to provide notice and an opportunity to comment to the public and to grape growers and the producers of grape by-products.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to protect the public welfare by:

Assessing the taxes and late fees authorized by Section 54-3610, Idaho Code, to fund the Grape Growers and Wine Producers Commission's role in protecting the public health, preventing fraudulent practices relating to the production and promotion of Idaho grapes and grape by-products as set forth in Section 54-3601, Idaho Code.

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:

Assessing the taxes and late fees as described above are authorized by Section 54-3610, Idaho Code, and are necessary to fund the Grape Growers and Wine Producers Commission's role in protecting the public health, preventing fraudulent practices relating to the production and promotion of Idaho grapes and grape by-products as set forth in Section 54-3601, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the necessity to protect the public health, safety, and welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Pintler, Commission Chair, (208) 455-8354.

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 25, 2006.

DATED this 23rd day of August, 2006.

Brad Pintler, Commission Chair
Idaho Grape Growers and Wine Producers Commission
117 North 9th Ave., Suite 2
Caldwell ID 83605
Phone: (208) 455-8354; Fax: (208) 455-8364

THE FOLLOWING IS THE TEXT OF DOCKET NO. 48-0101-0601

IDAPA 48
TITLE 01
CHAPTER 01

RULES OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 54-3605(15), Idaho Code. (7-1-06)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 48.01.01, "Rules of the Idaho Grape Growers and Wine Producers Commission". (7-1-06)T

02. Scope. These rules include, but are not limited to, levy of taxes and penalties as provided by Section 54-3610, Idaho Code. (7-1-06)T

002. WRITTEN INTERPRETATIONS.

This Commission may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection at the Commission office. (7-1-06)T

003. ADMINISTRATIVE APPEALS

The Idaho Rules of Administrative Procedure of the Attorney General on contested cases, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure," Section 100, et seq., shall apply. (7-1-06)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (7-1-06)T

005. OFFICE INFORMATION.

01. Street Address. The offices of the Commission are located at 117 North 9th Ave., Suite 2, Caldwell, Idaho. (7-1-06)T

02. Mailing Address. The mailing address of the Commission is 117 North 9th Ave., Suite 2, Caldwell, Idaho 83605. (7-1-06)T

03. Telephone Number. The telephone number of the Commission is (208) 455-8354. (7-1-06)T

04. Facsimile. The Commission's FAX number is (208) 455-8364. (7-1-06)T

05. Electronic Address. The Commission's web address is <http://www.idahowines.org/>. (7-1-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Commission records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

The definitions set forth in Title 54, Chapter 36, Idaho Code, shall apply to this chapter. (7-1-06)T

011. -- 019. (RESERVED)

020. TAX AND LATE PAYMENT PENALTY.

01. Levy and Rate of Tax. In accordance with Section 54-3610, Idaho Code, a tax is levied and imposed on wineries and grapes used, grown, or purchased for the production of wine in Idaho. The rate of tax shall be: (7-1-06)T

a. One hundred dollars (\$100) per winery. (7-1-06)T

b. Five dollars (\$5) per acre of grapes cultivated in Idaho for the purpose of vinification. (7-1-06)T

c. Five dollars (\$5) per ton for grapes purchased from producers outside Idaho for the production of wine in Idaho. (7-1-06)T

d. Five dollars (\$5) per one hundred sixty-seven (167) gallons, or any portion thereof, of grape juice purchased from producers outside Idaho for the production of wine in Idaho. (7-1-06)T

02. Maximum Levy. The total taxes paid by any individual winery shall not exceed three hundred dollars (\$300) annually. (7-1-06)T

03. Payment of Tax. The producer cultivating grapes for the production of wine shall pay the tax levied upon the producer. Each winery shall pay the tax levied upon the winery. Purchasers of grapes grown or grape juice produced outside Idaho shall pay taxes levied on such grapes and grape juice. All taxes shall be paid on or before June 30 of each year. (7-1-06)T

04. Late Payment Penalty. Persons making payment of the levied tax after the date set forth in this chapter shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. In addition to the late payment penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in Section 020 of these rules. (7-1-06)T

05. Opt Out Alternative. A grower or producer may opt out of the levy of tax by submitting a letter to the Commission no later than June 30 of each year stating intent to opt out of the application of the provisions of Title 54, Chapter 36, Idaho Code, for the upcoming fiscal year. The letter shall include the grower or producer's name and address. (7-1-06)T

021. -- 999. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0603

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 by Sections 39-105 and 39-107, Idaho Code.

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

**November 3, 2006, 3 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: Federal law requires the state of Idaho to submit a plan to EPA by November 17, 2006, that (1) ensures the state meets its Annual Coal Fired Electric Utility Steam Generating Unit (EGU) Mercury (H_g) budget for the appropriate periods; and (2) requires EGUs to comply with various monitoring, recordkeeping and reporting provisions. 40 CFR 60.24(h).

As part of the plan, DEQ proposes a rule to opt out of, or not participate in, the federal cap and trade program for H_g emissions from EGUs, codified at 40 CFR Part 60, Subpart HHHH. Additionally, to meet the state of Idaho's zero budget, DEQ proposes a rule that prohibits the construction of any EGU with H_g emissions.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2007 session of the Idaho Legislature if adopted by the Board and approved by the Legislature.

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

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not initiated because the rulemaking schedule did not allow for the timing of it.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before November 3, 2006.

DATED this 24th day of August, 2006.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality

1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET 58-0101-0603

182. -- 1998. (RESERVED).

199. ELECTRIC GENERATING UNIT CONSTRUCTION PROHIBITION.

No owner or operator shall construct or operate an Electric Generating Unit (EGU), as defined in 40 CFR 60.24, with a potential to emit mercury (Hg) emissions. ()

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IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS
46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine

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IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION
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IDAPA 48 - GRAPE GROWERS AND WINE PRODUCERS COMMISSION
48.01.01 - Rules of the Idaho Grape Growers and Wine Producers Commission

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58.01.01 - Rules for the Control of Air Pollution in Idaho

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

The written comment deadline is October 25, 2006, unless otherwise listed.

Temp & Prop indicates the rule is both temporary and proposed.

**** Indicates that a public hearing has been scheduled.**

IDAPA 01 - BOARD OF ACCOUNTANCY

PO Box 83720, Boise, ID 83720-0002

01-0101-0601, Idaho Accountancy Rules. Updates incorporations by reference; changes name of accrediting body to the "Northwest Commission on Colleges and Universities"; changes "fee" to "fine" to clarify penalty for regulatory non-compliance.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

PO Box 790, Boise, ID 83701

02-0104-0601, Rules Governing the Idaho Preferred Promotion Program. Adds a section requiring Department approval of use of logo on packaging and printed materials; and changes the symbol from Idaho Preferred™ to Idaho Preferred® because the name and logo have completed the trademark process and are now registered marks.

****02-0602-0602, Rules Pertaining to the Idaho Commercial Feed Law.** (Temp & Prop) Updates the label requirements for pet foods to be consistent with the AAFCO uniform label requirements for pet foods; clarifies that viable noxious weed seed found in a feed is an adulterant.

02-0622-0601, Noxious Weed Rules. (Temp & Prop) Amends noxious weed list and creates sub-lists; designates articles capable of disseminating noxious weeds; provides for cleaning and disinfecting of articles capable of dissemination of noxious weed propagules; deletes reference to Special Management Zone; adds penalty section and buffer zone allowance for counties.

02-0631-0601, Noxious Weed Free Forage and Straw Certification Rules. Updates title of the National standard used for field inspection procedures; removes obsolete sections; adds definitions; addresses forage cube certification; upgrades distribution requirements; and corrects a reference to the Idaho Noxious Weed Law.

****02-0633-0601, Organic Food Products Rules.** Updates incorporation by reference section; changes registration and certification deadlines; increases registration fees; establishes a late registration fee; caps the organic gross sales fee graduated scale; requires outside certifying agencies and their Idaho clients to register with Department.

IDAPA 07 - DIVISION OF BUILDING SAFETY

1090 E. Watertower St., Meridian, ID 83642

07-0104-0601, Rules Governing Electrical Specialty Licensing. (Temp & Prop) Clarifies that only journeyman and apprentice electricians, employed by an electrical contractor, may install electrical wiring, equipment and apparatus in modular structures.

07.05.01, Rules of the Public Contractors License Board.

07-0501-0602, Increases the fee cap rate for public works contractor and construction manager licenses.

07-0501-0603, (Temp & Prop) Allows for a “guarantor” to pledge assets to small contractors to allow them to qualify for licensure when the assets of the contracting entity on its own are insufficient to qualify.

**IDAPA 08 - STATE BOARD OF EDUCATION
PO Box 83720-0037, Boise, ID 83720-0037**

08-0111-0601, *Out-of-State Institutions, In-State Non-Accredited Institutions, and Correspondence or Private Courses*. Repeal of chapter.

08-0111-0602, *Registration of Postsecondary Educational Institutions and Proprietary Schools*. (Temp & Prop) Clarifies that postsecondary institutions must register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate and establishes criteria for evaluating these institutions.

08.02.03, Rules Governing Thoroughness

08-0203-0604 - Includes the subgroup of LEP students in the definition of “at-risk youth” so they will have access to additional acceleration services to assist them not only in their English language acquisition but also will increase their ability to participate fully in the classroom.

****08-0203-0605** - Increases total number of credits required for high school graduation to 46 credits starting with the 2013 graduating class; increases math requirements to 6 credits and science requirements to 6 credits; requires students to take the ACT, SAT, or COMPASS test in the 11th grade, and to complete a Senior Project; and requires all school districts to provide at least one Advanced Opportunity for all students.

08-0203-0606 – (Temp & Prop) Revises the English language development standards; establishes the Limited English Proficiency Program Accountability Plan; and establishes ISAT and IELA cut scores.

**IDAPA 11 - IDAHO STATE POLICE
PO Box 700, Meridian, ID 83680-0700**

11-0501-0601, *Rules Governing Alcohol Beverage Control*. Provides licensees with a specific time period following loss or move of a licensed premise to secure and occupy a new premise and display the alcohol beverage license; adds definitions to clarify references to Idaho Code; and updates licensing practices.

11-1001-0601, *Rules Governing ILETS – Idaho Law Enforcement Teletypewriter System*. Changes chapter name; changes fees charged for access and usage of the Idaho Public Safety and Security Information System to all agencies, local, state, and federal, by 25% beginning on 10/1/07.

11-1101-0601, *Rules of the Idaho Peace Officers Standards and Training Council*. Defines “Correction Officer” and “Adult Probation and Parole Officer” as law enforcement professions as it pertains to the two-year agreement so people working in those capacities get credit for time served; allows students attending the vocational law enforcement programs to be eligible for waivers for “uncharacterized” or “general under honorable conditions” discharges from military service and give the POST Executive Director the authority to waive these; adds language to prevent decertified officers from obtaining future POST certification with the exception of Correction Officers; adds the Law Enforcement Code of Ethics; clarifies that peace officer, county detention officer, and communications specialist experience must be with a duly authorized law enforcement agency to count toward peace officer and detention officer certification; clarifies the qualifications for the Supervisor certificate; and establishes the POST Hearing Board.

11-1102-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Juvenile Detention Officers*. Adds a county clerk to the Juvenile Training Council.

11-1103-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Juvenile Probation Officers*. Adds a county clerk to the Juvenile Training Council.

11-1104-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Correction Officers and Adult Probation and Parole Officers*. Extends the voluntary certification option for correction officers from 2008 to 2010 and for adult probation and parole officers from 2007 to 2009.

IDAPA 12 - DEPARTMENT OF FINANCE**PO Box 83720, Boise, ID 83720-0031**

12-0110-0601, Rules Pursuant to the Idaho Residential Mortgage Practices Act. Amends agency access information and updates the references to the documents incorporated by reference.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION**PO Box 25, Boise, Idaho 83707**

13-0104-0601, Rules Governing Licensing. (Temp & Prop) Amends eligibility requirements for a Disabled Person License; adopts eligibility requirements and permit conditions to implement the new “children with special needs big game permit/tag”; clarifies outfitter allocation process and the Handicapped Archery Permit rule to address equipment concerns of handicapped archers; deletes the Southeast Idaho Nonresident Deer License/Tag rule because it is now a controlled hunt.

13-0105-0601, Fishing Contests. (Temp & Prop) Allows additional fishing contests on planted trout; clarifies certain definitions, and makes clerical corrections and updates.

13-0108-0601, Rules Governing the Taking of Big Game Animals in the State of Idaho. (Temp & Prop) Simplifies the understanding of weapon type opportunities; addresses concerns of handicapped archers; implements new outfitter allocation; addresses elk depredations in eastern Idaho; adds an additional unit (Unit 69) to the Motor Vehicle Restriction Rule; lengthens the controlled hunt application period for deer, elk, antelope, and fall black bear; and clarifies and corrects hunt descriptions.

13-0109-0601, Rules Governing the Taking of Game Birds in the State of Idaho. (Temp & Prop) Requires the wearing of hunter orange when hunting on Wildlife Management Areas where pheasants are stocked.

13-0111-0601, Rules Governing Fish. (Temp & Prop) Changes address biological issues and angler desires.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**PO Box 83720, Boise, ID 83720-0036**

16-0208-0601, Vital Statistics Rules. Changes align the Department's disinterment rules with the amended statute and make other minor clarifications.

16.03.04, Rules Governing the Food Stamp Program

16-0304-0601 - Excludes one vehicle per adult family member in the Food Stamp household when determining eligibility.

16-0304-0602 - (Temp & Prop) Simplifies income calculations for self-employment and child support income; simplifies work requirements and sanctions for non-compliance; excludes additional military combat pay; amends definitions; aligns time lines with federal requirements.

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled

****16-0305-0603** - (Temp & Prop) Sets the criteria for determining how a working disabled individual's income and resources will be calculated to establish Medicaid eligibility.

****16-0305-0604** - (Temp & Prop) Establishes a method for the distribution of the annual cost of living adjustment increase to the basic allowance and the allowance for rent, utilities, and food.

16-0305-0606 - Requires Medicare-eligible individuals to enroll in Medicare as a condition of eligibility for Idaho Medicaid.

16.03.08, Rules Governing Temporary Assistance for Families in Idaho.

16-0308-0601 - Excludes one vehicle per adult family member in a TAFI household when determining eligibility.

16-0308-0602 - (Temp & Prop) Changes will help meet and assist work participants in improving work skills and training needed to be successful in obtaining jobs.

****16-0318-0602, Medicaid Cost-Sharing.** (Temp & Prop) Implements cost-sharing provisions of Section 56-209n, Idaho Code, to help individuals with disabilities be eligible for Medicaid while working.

16-0601-0601, Rules Governing Family and Children's Services. Makes guardianship assistance consistent with stature; utilizes "best practices" for implementing child protection rules and adoption rules for out-of-state adoptions, home studies, support, supervision, and limits on state-funded adoption and guardianship assistance; modifies "Professional Foster Care" requirements; and delete references to discontinued community programs.

16-0602-0601, Rules Governing Child Care Licensing. Requires that additional safety devices and barriers be in place to protect young children living in licensed foster homes and children's residential care facilities with swimming pools, hot tubs, ponds or other bodies of water on the property; removes requirement for automatic fingerprinting and criminal history background checks of young adults in foster homes or residential care facilities when they stay in the same home or facility after turning 18, unless he moves away from the home and returns; updates adoption rules to address the Multiethnic Placement Act that prohibits the delay or denying placement of any child on the basis of race, color or national origin.

****16-0606-0601, Developmental Disabilities Family Support and In-Home Assistance.** New chapter provides funding for services and equipment to help individuals with developmental disabilities continue to live with their families, prevent institutionalization, improve access to community supports, use existing resources efficiently, and obtain enhanced care; adds a new less costly grievance procedure option as an alternative to the more formal appeals process.

16.06.12, Rules Governing the Idaho Child Care Program.

16-0612-0601 - Chapter repeal.

16-0612-0602 - Chapter rewrite increases current income limits to 150% of the Federal Poverty Guidelines of 2005; updates co-payment rates; adds requirement for post-secondary students to work in order to be eligible for child care benefits and limits the time they can receive child care benefits to 2 years.

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

PO Box 83720, Boise, ID 83720-0041

17-0206-0601, Employers Reports. Reconciles conflicting time periods by changing the second time period to 15 days from 10 days; extends the reporting time period to 120 days to allow sureties sufficient time to capture data they are required to submit on the Summary of Payments; allows auditing of total and permanent benefit payments within a time frame that allows useful feedback to be given and corrections made.

****17-0208-0602, Miscellaneous Provisions.** Clarifies that the fee schedule does not apply to hospitals and substitutes an alternative method to compute fees for hospitals; reduces the number of conversion factors used for physician fees; and it allows health care providers to be fully paid after going through a dispute resolution process.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0043

18-0127-0601, Self-Funded Employee Health Care Plans. (Temp & Prop) Implements House Bill 822 by outlining requirements for employer sponsored self-funded health plans including information that must be submitted to the Department to register the plan and requirements for maintaining and reporting reserves and surplus.

18-0128-0601, Governmental Self-Funded Employee Health Care Plans. (Temp & Prop) New chapter implements House Bill 825 for registering, funding and operating self-funded health plans offered by public entities and created through joint powers agreements.

IDAPA 19 - IDAHO BOARD OF DENTISTRY

PO Box 83720, Boise, ID 83720-0021

19.01.01, Rules of the Idaho State Board of Dentistry.

19-0101-0602 - Changes physical office address.

19-0101-0603 - Proposes to create and issue an extended access dental hygiene restorative license endorsement and outlines requirements for such licensure.

19-0101-0604 - Current Rule 40 of the Administrative Rules of the Board of Dentistry contains a number of subsections that identify behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. A violation of any provision in Rule 40 may provide a basis for taking disciplinary action against a dental or dental

hygiene license. The Board of Dentistry proposes to amend existing Rule 40.18 to clarify the fact that unprofessional conduct not only includes the violation of a law governing dentistry but also includes the violation of any law pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry.

**IDAPA 22 - IDAHO BOARD OF MEDICINE
PO Box 83720, Boise, ID 83720-0058**

22-0104-0601, Rules of the Board of Medicine for Registration of Supervising and Directing Physicians. Adds definitions; provides for the duties and responsibilities of supervising physicians of medical personnel providing cosmetic treatments, including at those locations that are remote or non-medical; describes training requirements and outlines scope of cosmetic treatments.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Ste 220, Boise, ID 83702**

24-0301-0601, Rules of the State Board of Chiropractic Physicians. Updates the version of reference guidelines for peer review standards.

****24-0401-0601, Rules of the Idaho Board of Cosmetology.** (Temp & Prop) Corrects contact information; redefines hospital grade; defines "patron"; includes examiner qualifications with board qualifications; adds haircutter category to fee schedule; changes exam fees to allow for administration by third party; sets requirements for exam and theory exam criteria for haircutters; adds haircutter credit toward cosmetology license; changes reexamination eligibility; sets minimum hours for clinical services on patrons; and establishes rules for schools teaching haircutting.

24-0501-0601, Rules of the Board of Drinking Water and Wastewater Professionals. Requires applicants to take and pass the exam within one year in order to keep applications current.

24-0701-0601, Rules of the Idaho State Board of Landscape Architects. Increases original license fee and annual renewal fee to \$150.

24-0901-0601, Rules of the Board of Examiners of Nursing Home Administrators. (Temp & Prop) Allows for a masters degree as part of experience/education requirements for licensure by endorsement.

24-1001-0601, Rules of the State Board of Optometry. Revises exam requirements and length of work experience required for endorsement; revises continuing education to include observation and the use of excess hours; updates the code of ethics; and revises contents of prescriptions.

24-1201-0601, Rules of the Idaho State Board of Psychologist Examiners. Updates contact information; increases fee for renewal of licenses and service extender applications.

24-1301-0601, Rules of the Physical Therapy Licensure Board. (Temp & Prop). New chapter provides definitions; defines supervision; establishes application process; sets fees, disciplinary penalties, and standards for continuing education; and provides a code of ethics.

24-1401-0601, Rules of the State Board of Social Work Examiners. Clarifies credentials to be filed; allows for termination of inactive files after 24 months of no contact; and deletes Clinical Practice Exemption and Independent Practice rules.

24-1501-0601, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Updates incorporation by reference pertaining to ethics; clarifies and revises counselor and therapist supervisor requirements; clarifies qualifications for clinical professional counselors; and adds national credential registry for endorsement qualifications.

24-1701-0601, Rules of the Idaho State Board of Acupuncture. Updates contact information for the Board; and reduces the original license fee and the annual renewal fee to \$200 per license.

24-1801-0601, Rules of the Real Estate Appraiser Board. Updates contact information; clarifies education required to include courses approved by AQB; changes education effective dates to 1/1/08 for most licenses; allows board meeting attendance to count toward continuing education credits.

24-1901-0601, Rules of the Board of Examiners of Residential Care Facility Administrators. Adds scope of practice; and increases license application and provisional/temporary permits fees.

**IDAPA 27 -- BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067**

27-0101-0603, Rules of the Idaho State Board of Pharmacy. Requires licensed pharmacies to submit the same theft loss information to the Board that they now submit to the DEA.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-1101-0601, Safety and Accident Reporting Rules for Utilities Regulated by the PUC. Adopts the 2007 Edition of the National Electrical Safety Code (NESC) that is incorporated by reference.

**IDAPA 33 - IDAHO REAL ESTATE COMMISSION
PO Box 83720, Boise, ID 83720**

33.01.01, Rules of the Idaho Real Estate Commission.

33-0101-0602 - (Temp & Prop) Establishes a mechanism by which a designated broker can access and review the electronically-kept continuing education records of the sales associates currently licensed with that broker.

33-0101-0603 – (Temp & Prop) Expands and amends list of topics approved for continuing education credits.

**IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35.01.01, Idaho Income Tax Administrative Rules

35-0101-0601, Numerous changes conform to statutory changes; adds table for income tax brackets and rates for calendar year 2006; clarifies the addback for state and local income and sales taxes when limitations are imposed in computing the federal itemized deduction amount; changes holding period for real property to 12 months; clarifies time period that an interest in income of a pass-through entity must be met; modifies the calculation of the proration percentage; gives the Tax Commission authority to require an alternative method for determining Idaho source income of a partnership when the apportionment formula does not fairly represent the extent of the business activity in Idaho; clarifies that a corporation that is protected by federal Public Law 86-272 is exempt from the corporate income tax, including the minimum tax; addresses the modifications to the other state's adjusted gross income and tax required when computing the credit for taxes paid to another state; allows information returns to be submitted through electronic filing; clarifies that taxpayers whose business activities in Idaho are protected under Public Law 86-272 are not required to pay the permanent building fund tax; new rule addresses the Idaho Small Employer Investment Tax Credit.

****35-0101-0602,** Addresses dividends from real estate investment trusts and regulated investment companies; clarifies that insurance companies are included in the combined report, but their tax is deducted from the tax liability computed for the unitary group if paying the Idaho premium tax.

35.01.02, Sales Tax Administrative Rules

35-0102-0601, Adds required sections to rule; removes tax on sales of intrastate charter flights; sheriff's offices are assigned a seller's permit number and must file returns quarterly; clarifies that "transporting freight or passengers for hire" means providing transportation services to the public and not just to related parties; state that discount memberships are intangible and their sale is not taxable; clarifies that no tax is due on complimentary items given away when a purchase of tangible personal property is required as long as the sale of the item purchased is taxable; clarifies that an Idaho resident who forms an LLC in another state for the primary purpose of purchasing one or more motor vehicles does not qualify for the nonresident exemption. clarifies that credit will be given against any Idaho use tax due for local sales taxes paid in Alaska if the goods are then brought to Idaho.

35-0102-0602, adds a provision that 50% of the sales price is presumed to be subject to tax when services and

software are not separately stated.

35-0106-0601, Hotel/Motel Room Tax Administrative Rules. Removes references to the 4% Greater Boise Auditorium District tax rate.

35-0109-0601, Idaho Kitchen and Table Wine Tax Administrative Rules. Adds definition of “wine direct shipper”; wine direct shippers are required by statute to remit wine tax and collect use tax on their sales of wine to Idaho residents; clarifies that wine direct shippers are required to post a surety bond or some other acceptable form of security in the same manner as in-state wineries and wine distributors; wine direct shippers are required to obtain a wine tax reporting number in the same manner as in-state wineries and wine distributors; states what information is required on a wine tax return.

35-0110-0601, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Clarifies that shippers who are not licensed tobacco products distributors must pay the tobacco tax; requires distributors to obtain a copy of the owner’s tribal identification card or a certificate of tribal ownership when selling to an enrolled tribal member or an Indian tribe.

35-0201-0601, Idaho Tax Commission Administration and Enforcement Rules. Establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds; corrects the calculation of penalties when a taxpayer qualifies for an extended due date, but files the return before such date; deletes the requirement that an offer of compromise include a remittance in the amount of the offer; changes references.

**IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0222-0601, Rules Governing Mileage Use Fee Administration. Recognizes a new method of fee payments, based on registration and permit fees; addresses quarterly reporting requirements, installment payments, refunds, delinquent or non-payment of fees, suspension or revocation of a customer account and methods of payment.

39-0345-0601, Rules Governing Sale of No Longer Useful or Usable Real Property. (Temp & Prop) Allows local government entities to acquire surplus ITD property, for other than transportation purposes, at a negotiated price, up to the appraised value, expressly for public purposes, with sales proceeds to the State Highway Account.

39-0362-0601, Rules Governing Logo Signs. Updates incorporation by reference documents.

39-0364-0601, Rules Governing Tourist Oriented Directional Signs. Updates incorporation by reference documents.

39-0407-0601, Rules Governing Aerial Search And Rescue of Lost Aircraft and Airmen. Places the coordination of search and rescue under the direction and supervision of the Chief of the Bureau of Homeland Security while requiring aerial search and rescue operations be coordinated by the Idaho Transportation Department, Division of Aeronautics.

**IDAPA 41 - PUBLIC HEALTH DISTRICTS
2195 Ironwood Ct., Coeur d’Alene, ID 83814**

41-0101-0601, Rules of Panhandle Health District 1. Expands Institutional Controls Program to include OU-3 (Coeur d’Alene River Basin) because remediation is taking place in OU-3 of the Bunker Hill Superfund site cleanup; clarifies sewage disposal systems standards and procedures; clarifies existing rules regarding critical materials on the Rathdrum Prairie Aquifer; corrects outdated references to the Department of Health and Welfare; adds required sections.

**IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS
2270 Old Penitentiary Rd., Boise, ID 83707**

46-0101-0601, Rules of the State of Idaho Board of Veterinary Medicine. Changes reflect current practices and clarify processes and procedures; revises continuing education requirements; updates practice standards; clarifies the code of conduct; establishes a timeframe for the filing of complaints.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION
PO Box 83720, Boise, ID 83720-0037

****47-0102-0601, Rules and Minimum Standards Governing Extended Employment Services.** (Temp & Prop) Establishes IDVR as the agency with the authority to administer Extended Employment Services programs statewide.

IDAPA 48 - GRAPE GROWERS AND WINE PRODUCERS COMMISSION
117 North 9th Ave., Suite 2, Caldwell ID 83605

48-0101-0601, Rules of the Idaho Grape Growers and Wine Producers Commission. (Temp & Prop) New chapter imposes a tax and late fee penalties for failure to timely pay tax on grape growers and producers.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

****58-0101-0603, Rules for the Control of Air Pollution in Idaho.** Proposes to opt out of, or not participate in, the federal cap and trade program for H_g emissions from EGUs and proposes to prohibit the construction of any EGU with H_g emissions.

Please refer to the Idaho Administrative Bulletin, **October 4, 2006, Volume 06-10** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at www.idaho.gov/adm/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

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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.**

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