

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 06-1 refers to the first Bulletin issued in calendar year 2006; Bulletin 07-1 refers to the first Bulletin issued in calendar year 2007. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 07-1 refers to January 2007; Volume No. 07-2 refers to February 2007; and so forth. Example: The Bulletin published in January of 2007 is cited as Volume 07-1. The December 2006 Bulletin is cited as Volume 06-12.

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 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 only published in the Bulletin and **not** printed in the Administrative Code.*

*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 requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as 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 rule that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

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

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending 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 reviewed by the legislature and not rejected, amended or modified becomes 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 83720-0306, 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 a table 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 38.05.01.200.02.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.

“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 “-”, (38-0501-0701). 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 number:

“DOCKET NO. 38-0501-0701”

“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**).

“0701” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in **calendar year 2007**. A subsequent rulemaking on this same rule chapter in calendar year 2007 would be designated as “0702”. The docket number in this scenario would be 38-0501-0702.

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 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 25, 2007
07-5	May 2007	April 6, 2007	May 2, 2007	May 23, 2007
07-6	June 2007	May 4, 2007	June 6, 2007	June 27, 2007
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07-8	August 2007	June 29, 2007	August 1, 2007	August 22, 2007
07-9	September 2007	August 3, 2007	September 5, 2007	September 26, 2007
07-10	October 2007	**August 24, 2007	October 3, 2007	October 24, 2007
07-11	November 2007	October 5, 2007	November 7, 2007	November 28, 2007
07-12	December 2007	November 2, 2007	December 5, 2007	December 26, 2006

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2008

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
08-1	January 2008	*November 14, 2007	January 2, 2008	January 22, 2008
08-2	February 2008	January 4, 2008	February 6, 2008	February 27, 2008
08-3	March 2008	February 8, 2008	March 5, 2008	March 26, 2008
08-4	April 2008	March 7, 2008	April 2, 2008	April 23, 2008
08-5	May 2008	April 4, 2008	May 7, 2008	May 28, 2008
08-6	June 2008	May 2, 2008	June 4, 2008	June 25, 2008
08-7	July 2008	May 30, 2008	July 2, 2008	July 23, 2008
08-8	August 2008	July 3, 2008	August 6, 2008	August 27, 2008
08-9	September 2008	August 1, 2008	September 3, 2008	September 24, 2008
08-10	October 2008	**August 20, 2008	October 1, 2008	October 22, 2008
08-11	November 2008	October 3, 2008	November 5, 2008	November 26, 2008
08-12	December 2008	October 31, 2008	December 3, 2008	December 24, 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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IDAPA 46	Veterinary Medical Examiners, Board of
IDAPA 47	Vocational Rehabilitation, Division of
IDAPA 37	Water Resources, Department of
IDAPA 42	Wheat Commission

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2007-06

**ESTABLISHING THE IDAHO COUNCIL ON CHILDRENS MENTAL HEALTH
REPEALING AND REPLACING EXECUTIVE ORDER 2003-05**

WHEREAS, children with serious emotional disturbances have unique abilities, concerns and diverse needs; and

WHEREAS, serious emotional disturbances interfere with the vital development and maturation of our State's most important resource - its children; and

WHEREAS, the appropriate treatment of children and youth with serious emotional disturbances is cost-effective because it enhances productivity, reduces utilization of more costly and invasive services, decreases social dependence and family disruption; and

WHEREAS, the State of Idaho desires to establish a comprehensive, community-based system of care emphasizing the natural support that families and peers provide; and

WHEREAS, these families would benefit from individualized services which are acceptable and accountable to them and others in the communities where they live; and

WHEREAS, children and youth with serious emotional disturbances and their families should participate in determining their destiny at the direct service level and at the policy and planning level; and

WHEREAS, the Idaho Legislature has set forth its policy for providing these services in the Idaho Children's Mental Health Services Act; and

WHEREAS, the implementation plan formulated from the recommendations of "The Needs Assessment of Idaho's Children with Serious Emotional Disturbances and Their Families" proposes that the Idaho Council on Children's Mental Health be established to provide state level leadership in the development of an integrated system of care for children with mental health needs.

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby establish the Idaho Council on Children's Mental Health.

The Council's responsibilities shall be:

To oversee the implementation of the plan and the legislative policy for providing access to treatment, prevention, and rehabilitation services for children with serious emotional disturbances;

To serve as a vehicle for inter- and intra-agency policy and program development;

To establish local level councils according to resources, population, need and geographic considerations;

To define the specific key duties, powers, goals, and outcomes to be achieved by the local councils;

To provide leadership through the development of standards, provision of technical assistance, monitoring, evaluating and reporting on the progress of the local councils; and

To evaluate and make recommendations regarding the funding and delivery of children's mental health

services statewide.

Council membership shall be composed of representatives from the following:

1. *the Office of the Governor;*
2. *the Legislature;*
3. *the Judiciary;*
4. *the Department of Health and Welfare;*
5. *the Department of Juvenile Corrections;*
6. *the Department of Education;*
7. *the State Planning Council on Mental Health;*
8. *a Parent Representative;*
9. *an Advocate;*
10. *a Representative of providers of children's mental health services;*
11. *a County commissioner;*
12. *a Tribal representative;*
13. *a Representative of the Hispanic community; and*
14. *a Representative of the statewide regions of the Idaho Council on Children's Health.*

All council members shall be appointed by the Governor.

Council members' term shall be for the duration of this Executive Order.

The Governor hereby appoints Senator Denton Darrington to serve as the Chairman of the Council.

Staff for the Council will be provided by the Department of Health and Welfare.

The Council may establish subcommittees at its discretion.

This Executive Order shall cease to be in effect on September 29, 2008.



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 twenty-third day of June in the year of our Lord two thousand and seven, 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.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2007-07

**PROHIBITING THE USE OF STATE FUNDS FOR MEMBERSHIP
IN PROFESSIONAL ASSOCIATIONS BY STATE EMPLOYEES**

WHEREAS, there is need for a uniform state policy regarding the payment of professional dues, fees and memberships for state employees. I find it is prudent to continue the policy for all state employees in the Executive Department that was first promulgated in Executive Order No. 81-11.

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, 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:

No state money shall be used to pay for any kind of professional, occupational, or trade license, certificate, permit, or occupational registration for any state employee or officer; nor shall any state monies be used to pay for any kind of dues to any professional, occupational, or trade association in which membership is restricted to persons who are licensed, certified, or registered under Idaho law. This policy does not preclude the state or state departments from paying dues or license fees to organizations relating to their responsibilities in state government, or where such dues or license are part of a requirement of employment.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 18th day of July in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred thirty-second and of the Statehood of Idaho the one hundred eighteenth.

**C.L. "BUTCH" OTTER
GOVERNOR**

**BEN YSURSA
SECRETARY OF STATE**

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM
DOCKET NO. 02-0104-0701
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 17, 2007.

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 clarify product qualification requirements for processed products.

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 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:

No negative fiscal impact to the general fund will result from this rulemaking.

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants with processed products.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

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 24, 2007.

DATED this 22nd day of August, 2007.

Brian J. Oakey
Deputy 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. 02-0104-0701

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, and commodities, ~~and meat~~ bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (~~3-30-07~~)(____)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and shall be processed in the state of 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. (3-30-07)

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. (3-30-07)

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)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.03 - RULES GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 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 25-207, 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 July 4, 2007 Idaho Administrative Bulletin, Vol. 07-7, pages 15 through 23.

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 John Chatburn, Deputy Administrator at (208) 332-8540.

DATED this 24th day of August, 2007.

Celia R. Gould
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

DOCKET NO. 02-0403-0701 - 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 07-7, July 4, 2007, pages 15 through 23.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2008 Idaho State Legislature as a final rule.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 23, 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 25-601, Idaho Code.

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

Monday, October 15, 2007 -- 7:00 - 8:00 PM
Nampa Civic Center
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 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 rulemaking:

Idaho's brucellosis status has been upgraded from "Class A" to "Class Free". This rule repeals certain requirements on cattle exported from Idaho to reflect this change in status.

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 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: Negotiated rulemaking was not conducted. However, this rule has been discussed with Idaho's cattle industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

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 24, 2007.

DATED this 13th day of August, 2007.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500 / Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0420-0701

028. BRUCELLOSIS TESTING.

The Administrator may require *brucellosis* testing of cattle, domestic bison, swine, domestic cervidae, or other animals. (5-3-03)

01. Duty to Restrain. It shall be the duty of each person who has control of such animals to pen the animals in suitable pens and restrain them for the test when directed to do so in writing by the Administrator. (5-3-03)

02. Records of Tests. When any cattle, domestic bison, swine, or domestic cervidae are tested for *brucellosis* a complete test record shall be made and the record shall be shown on an official *brucellosis* test form provided by the Administrator. The test form shall be completely filled out, including the following information: (5-3-03)

- a. The name and address of the owner and the location of the animals at the time of test. (5-3-03)
- b. The name and signature of the person conducting the test. (5-3-03)
- c. Individual identification number of each animal and the registration name and number of each purebred animal. (5-3-03)
- d. Age of each animal. (5-3-03)
- e. Sex of each animal. (5-3-03)
- f. Breed of each animal. (5-3-03)
- g. Species of animals tested. (5-3-03)
- h. Vaccination status, including the vaccination tattoo for each vaccinated animal. (5-3-03)
- i. Test results, if a *brucellosis* test has been performed, for each animal. (5-3-03)
- j. Date sample was collected for testing. (3-30-07)

03. Interstate Movement. All test eligible cattle and domestic bison exported from Idaho shall be tested negative for *brucellosis* within thirty (30) days prior to the interstate movement ~~except if required by the state of destination.~~ (3-30-07)(7-23-07)T

~~a. Cattle or domestic bison moving directly from the herd of origin to an approved slaughter establishment or to a specifically approved livestock market to be sold for immediate slaughter, if herd of origin identity is maintained. (3-30-07)~~

~~b. Individual commuter herds moving from Idaho to another state if both state veterinarians agree in writing that testing may be waived. (3-30-07)~~

~~c. Intact female cattle and domestic bison between eighteen (18) months of age and twenty four (24) months of age that are not pregnant, and are being moved to a feedlot, provided that the state veterinarian in the receiving state and the Idaho state veterinarian agree in writing that testing may be waived. (3-30-07)~~

~~d. Cattle and domestic bison, from a certified brucellosis free herd, moving with a certificate of veterinary inspection stating the animals originated from a certified brucellosis free herd. (3-30-07)~~

04. Dairy Herds. *Brucellosis* ring tests shall be conducted on all dairy herds at least ~~quarterly once every six (6) months.~~ (3-30-07)(7-23-07)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.28 - RULES GOVERNING LIVESTOCK DEALERS, BUYING STATIONS, AND LIVESTOCK TRADER LOTS

DOCKET NO. 02-0428-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 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(s) 25-207 and 25-601, 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 July 4, 2007 Idaho Administrative Bulletin, Vol. 07-7, pages 25 through 35.

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 John Chatburn, Deputy Administrator at (208) 332-8540.

DATED this 24th day of August, 2007.

Celia R. Gould, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

DOCKET NO. 02-0428-0701 - 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 07-7, July 4, 2007, pages 25 through 35.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2008 Idaho State Legislature as a final rule.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.30 - RULES GOVERNING NUTRIENT MANAGEMENT
DOCKET NO. 02-0430-0701 (NEW CHAPTER)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 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 25-207, Idaho Code.

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

Monday, October 15, 2007
8:00 - 9:00 pm
Nampa Civic Center
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 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 is a new rule chapter that establishes the following:

1. Certification of soil samplers for nutrient management purposes on cattle operations;
2. Criteria for soil sample collection; and
3. Penalty provisions.

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

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

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: Negotiated rulemaking was not conducted; however, these rules were developed with input from beef cattle producers and dairy producers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

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 24, 2007.

DATED this 21st day of August 2007.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0430-0701

IDAPA 02
TITLE 04
CHAPTER 30

02.04.30 - RULES GOVERNING NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 4, and Title 22, Chapters 1 and 49, Idaho Code. (9-1-07)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is "Rules Governing Nutrient Management." (9-1-07)T

02. Scope. These rules shall govern the certification process for soil samplers and nutrient management planners, and the process for collecting and handling soil samples. (9-1-07)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (9-1-07)T

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. (9-1-07)T

004. INCORPORATION BY REFERENCE.

The August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised), is hereby incorporated by reference. (9-1-07)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- TELEPHONE -- AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (9-1-07)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. (9-1-07)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (9-1-07)T

04. Telephone Number. The telephone number of the Division of Animal Industries at the central

office is (208) 332-8540. (9-1-07)T

05. Fax Number. The fax number of the Division of Animal Industries at the central office is (208) 334-4062. (9-1-07)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (9-1-07)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (9-1-07)T

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (9-1-07)T

02. Department. The Idaho State Department of Agriculture. (9-1-07)T

03. Director. The Director of the Idaho State Department of Agriculture. (9-1-07)T

04. Nutrient Management Plan. A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. (9-1-07)T

05. Nutrient Management Standard. The 1999 publication by the United States Department of Agriculture Natural Resource Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Department. (9-1-07)T

06. Person. Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. (9-1-07)T

07. Representative Soil Sample. A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. (9-1-07)T

08. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (9-1-07)T

011. ABBREVIATIONS.

01. CNMP. Certified Nutrient Management Planner. (9-1-07)T

02. CSS. Certified Soil Sampler. (9-1-07)T

03. NMP. Nutrient Management Plan. (9-1-07)T

04. NMS. Nutrient Management Standard. (9-1-07)T

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. (9-1-07)T

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). (9-1-07)T

07. USDA. United States Department of Agriculture. (9-1-07)T

012. -- 019. (RESERVED).

020. APPLICABILITY.

These rules apply to nutrient management on the following cattle operations: (9-1-07)T

01. Dairies. All dairies located in Idaho licensed to sell milk for human consumption. (9-1-07)T

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (9-1-07)T

021. -- 099. (RESERVED).

100. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," must be written by nutrient management planners who have been certified by the Department. (9-1-07)T

101. -- 149. (RESERVED).

150. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs must be certified through the Department Certification Program. (9-1-07)T

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. (9-1-07)T

02. Development. Nothing shall prohibit any person from developing an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (9-1-07)T

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. (9-1-07)T

151. -- 189. (RESERVED).

190. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

Nutrient Management Planner Certification may be revoked by the Department if the CNMP: (9-1-07)T

01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information. (9-1-07)T

02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (9-1-07)T

03. Fails to Follow Provisions. Fails to meet any requirement of this rule. (9-1-07)T

191. -- 199. (RESERVED).

200. SOIL SAMPLES.

The owners or operators of all dairies and beef cattle operations required to implement nutrient management plans pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," must have soil samples collected each year from all fields owned or operated by the dairy or beef operation to which livestock waste, manure, or process wastewater from the operation was land applied. (9-1-07)T

201. -- 219. (RESERVED).

220. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples required to be collected pursuant to this chapter must be collected by a CSS. (9-1-07)T

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (9-1-07)T

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site specific situations warrant alternative sampling depths. (9-1-07)T

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. (9-1-07)T

221. -- 229. (RESERVED).

230. SOIL SAMPLE SUBMISSION.

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and must be submitted to an approved laboratory by the CSS who collected the soil sample. (9-1-07)T

231. -- 299. (RESERVED).

300. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program are approved laboratories for the purposes of this chapter. (9-1-07)T

301. -- 399. (RESERVED).

400. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," must retain records of nutrient analysis for a minimum of five (5) years. (9-1-07)T

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (9-1-07)T

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (9-1-07)T

401. -- 499. (RESERVED).

500. SOIL SAMPLER CERTIFICATION.

All persons who collect soil samples from operations that are required to sample and test soil for nutrients pursuant to this chapter must be certified through the Department Certification Program. (9-1-07)T

01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department. (9-1-07)T

02. Sampling. Nothing shall prohibit any person from sampling their own operation as outlined in these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (9-1-07)T

03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (9-1-07)T

501. -- 899. (RESERVED).

900. REVOCATION OF SOIL SAMPLER CERTIFICATION.

Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in these rules. (9-1-07)T

901. -- 989. (RESERVED).

990. PENALTIES.

Any person violating any of the provisions of this Chapter may be subject to the penalty provisions of Title 22, Chapter 1 and 49 and Title 37, Chapter 4, Idaho Code. (9-1-07)T

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (9-1-07)T

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (9-1-07)T

991. -- 999. (RESERVED).

IDAPA 02 - STATE DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-0701

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 22-1103, 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 17, 2007.

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 incorporation by reference section IDAPA 02.06.33.004 is being amended to reflect the changes to 7 CFR part 205, National Organic Program, effective June 21, 2007. The four definitions: Handler, Livestock, Person, Producer, are being amended to align them with Title 22, Chapter 11, Idaho Code and 7 CFR part 205, National Organic Program.

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 because the changes are to the incorporation by reference and alignment of definitions that were changed in Title 22, Chapter 11, Idaho Code by the 2007 legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Margaret Misner, Program Manager, (208) 332-8673.

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 24, 2007.

DATED this 14th day of August, 2007.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0633-0701

004. INCORPORATION BY REFERENCE.

The ~~January 2006~~ June 21, 2007 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. (3-19-07)(____)

(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. (3-19-07)

~~042.~~ **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. (3-19-07)

~~023.~~ **Department.** The Idaho State Department of Agriculture. (4-2-03)

~~034.~~ **Director.** The director of the department of agriculture or the director's designee. (4-2-03)

05. Educational Activity. Seminar, conference, farm tour, class, or research. (3-19-07)

06. 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)

07. Handler. Any person ~~or organization who processes, packages, resells, transports or stores organic food products or nonorganic food products engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final~~ retailers of agricultural products that do not process agricultural products. (4-2-03)(____)

08. Livestock. ~~Cattle, swine, sheep, goats, ratites, domestic cervidae and bison.~~ Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other non-plant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products. (4-2-03)(____)

09. 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)

10. 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)

11. 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)

12. Person. Any individual, partnership, association, corporation, cooperative, or ~~any organized group~~

~~of persons whether incorporated or not other entity.~~ (4-2-03)(____)

13. 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. A person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products.~~ (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. (3-19-07)

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

IDAPA 03 - IDAHO STATE ATHLETIC COMMISSION

03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION

DOCKET NO. 03-0101-0701 (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) 54-416, 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 17, 2007.

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 bring the rules into compliance with recent changes in Title 54, Chapter 4, Idaho Code. Add definitions, remove sections that are no longer applicable, change licensing information, change references for boxer to combatant, remove requirements for passbook, revise requirements, revise contract sections, clarify surety bond, clarify approval for events, clarify admission rules, clarify complimentary tickets and other sections dealing with tickets, correct typographical errors, delete amateur boxing, clarify martial arts, and change references that are no longer applicable.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: 54-416, Idaho Code allows the setting of fees. Fees are currently being collected as established by the commissioner. Listing the fees in these rules will create uniformity.

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 changes are being done at the direction of the commissioner.

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 24, 2007.

DATED this 29th day of August, 2007.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 03-0101-0701

005. INCORPORATION BY REFERENCE.

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced.

()

006. ADDRESS OF THE IDAHO STATE ATHLETIC COMMISSION.

The office of the State Athletic Commission 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 atc@ibol.idaho.gov. The Board's official web site is at www.ibol.idaho.gov/atc.htm.

()

0057. -- 009. (RESERVED).

010. DEFINITIONS.

01. Bureau. The Bureau of Occupational Licenses, as prescribed in Section 67- 2602, Idaho Code.

()

042. Champion. A person who has been formally acknowledged supreme in a branch of athletics or game of skill and who is ready to contend with any qualified challenger.

(3-3-94)

03. ~~Passbook.~~ ~~A document which records the results of each contest in which a boxer participates, including any injuries sustained, medical treatment received or suspensions ordered.~~ **Combatant.** Any boxer, kickboxer, martial artist or wrestler who takes part as a competitor in an event under the jurisdiction of the commission.

(3-3-94)()

024. Commission. The Idaho Athletic Commission created under Title 54, Chapter 4, Idaho Code, or designated ~~representative agent~~.

(3-3-94)()

05. Commissioner. The state athletic commissioner, as prescribed in Section 54-401, Idaho Code.

()

06. Event. Any contest, match, or exhibition of unarmed combat under the jurisdiction of the commission.

()

047. Physician. A doctor of medicine ~~certified~~ licensed by the ~~Commission~~ Idaho Board of Medicine.

(3-3-94)()

058. Stub. That part of the ticket retained by a person entering the arena in which an event is held after the ticket has been collected.

(3-3-94)()

069. Ticket. That document issued by the promoter allowing a person's entrance and attendance at an event and may include ~~that part of the ticket retained by the promoter~~ upon documenting a person's entrance to ~~the arena~~ an event.

(3-3-94)()

011. -- 049. (RESERVED).

050. COMMISSIONS REPRESENTATIVES AND EMPLOYEES.

~~The jurisdiction, duties and responsibilities of every representative and employee of the Commission must be established by the executive director with the approval of the Commission. Every employee is under the general supervision of the executive director.~~

(7-1-93)

0511. -- 099. (RESERVED).

100. LICENSING.

01. Application for License. An application for a license must be made in writing submitted to the

Bureau on a form supplied by the Commission and be verified under oath by the applicant for each of the following:
(3-3-94)(____)

- a. Professional boxer; (3-3-94)
- b. Professional wrestler; (3-3-94)
- c. Promoter; (3-3-94)
- d. Matchmaker; (3-3-94)
- e. Manager; (3-3-94)
- f. Second, including a trainer; (3-3-94)
- g. Referee; (3-3-94)
- h. Judge; or (3-3-94)(____)
- i. Timekeeper; or (3-3-94)(____)
- ~~j. Physician. (3-3-94)~~

02. ~~Subject to Conditions.~~ Every license issued is subject to the conditions and agreements set forth in the application. Complete Applications. All applications shall be made on a form provided by the Bureau and must be complete and include the required fee and any supporting documentation required before they will be considered by the commission.
(3-3-94)(____)

~~03. False Statements.~~ Any false statement of a material matter in such an application is a ground for:
(3-3-94)

~~a. Denial of the application; or (3-3-94)~~

~~b. Revocation of the license, if the license has already been issued. (3-3-94)~~

101. AGE AND PHYSICAL CONDITION ~~OF BOXER.~~

01. Age of Boxer Combatant. All ~~boxer must have his~~ applications for a combatant license shall be reviewed by the Commission so that ~~his~~ the applicant's experience and fitness may be considered before a license is issued, if the boxer applicant has:
(3-3-94)(____)

a. Not reached eighteen (18) years of age; or (3-3-94)

b. Reached thirty-six (36) years of age. (3-3-94)

02. Poor Vision. The Commission will not issue a license to ~~box~~ engage in unarmed combat to any applicant who is found to be blind in one (1) eye or whose vision in one (1) eye is so poor that a physician recommends that no license be granted. Exceptions will not be made due to exemplary vision in the good eye.
(3-3-94)(____)

03. Cerebral Hemorrhage. The Commission will not issue a license to ~~box~~ engage in unarmed combat to any person who has suffered a cerebral hemorrhage.
(3-3-94)(____)

04. Serious Head Injuries. The Commission will review the application of any person who has suffered a serious head injury before a license is issued to that person. (3-3-94)

102. ABILITY OF ~~BOXER~~ COMBATANT.

01. **Satisfy Commission.** Before a combatant license ~~to box~~ is issued by the Commission to any person, the Commission must be satisfied of the person's ability to compete. (3-3-94)(____)

02. **Questioned Ability of Boxer.** If a ~~boxer~~combatant's ability to perform is questioned for any reason, the Commission may hold a hearing to determine: (3-3-94)(____)

a. Whether the person's license ~~to box~~ should be revoked; or (3-3-94)(____)

b. Whether he should be granted a license ~~to box~~. (3-3-94)(____)

103. **PHYSICAL EXAMINATION OF ~~BOXER~~ COMBATANT.**

01. **Examination by Physician.** Any ~~boxer~~ combatant who has applied for a license or a renewal of his license must be examined by a physician. The physician shall establish the ~~boxer~~combatant's physical and mental fitness for competition. (3-3-94)(____)

02. **Additional Examination.** Any ~~boxer~~ combatant licensed by the Commission who participates in a ~~boxing~~ contest outside of the state of Idaho may be required to take this examination again before being allowed to ~~box~~ compete in Idaho. (3-3-94)(____)

03. **Drug Abuse.** The Commission will not issue a license to an athlete who has a recent history of drug abuse, without proof of participation in a recognized drug rehabilitation program and/or submission to urinalysis. (3-3-94)

04. **HIV Blood Testing.** The Commission will not issue a license to an athlete who has tested positive ~~to~~ for the HIV virus, hepatitis, or illegal drugs or other substances. A current test report must accompany the license application. (3-3-94)(____)

104. **~~ISSUANCE AND POSSESSION OF PASSBOOK.~~**

~~01. **Passbook Requirement.** Before a license to box is issued by the Commission, the applicant for that license must have a valid passbook issued by the Commission or the proper regulatory agency of another jurisdiction. An Idaho boxer must hold a valid passbook to compete in Idaho. (3-3-94)~~

~~02. **Penalties.** An Idaho boxer who fails to present his passbook before a contest may be refused permission to compete or may be charged a penalty for his failure to do so. The penalty for failing to present a valid passbook will be not more than two hundred and fifty dollars (\$250), to be determined by a member of the Commission. (3-3-94)~~

~~03. **Passbooks Issued.** The Commission may issue passbooks to qualified residents of Idaho. (3-3-94)~~

~~04. **Residence Changes.** A boxer whose residence changes from one (1) jurisdiction to Idaho must secure a passbook issued by the Idaho State Athletic Commission. (3-3-94)~~

~~05. **Requirements After Obtaining Passbook.** A boxer who holds a passbook in good standing from another jurisdiction must pass a physical before competing in any contest in Idaho and pay the annual licensing fee. (3-3-94)~~

~~06. **Recording on Passbook.** The passbook of each boxer must be held by the Commission representative during each contest. The Commission representative shall record the results of the contest, including any injuries sustained, medical treatment received or suspensions ordered, in the passbook before returning it to the boxer. (3-3-94)~~

~~07. **Reporting.** The Commission will, as soon as possible, report to the proper regulatory agencies and reporting services in other jurisdictions, the results of each contest held in Idaho, including any injuries sustained or suspensions ordered. (3-3-94)~~

104. FEES (RULE 104).

- 01. Application.** Application fee: ()
- a.** Combatant - thirty dollars (\$30). ()
- b.** Non-combatant - thirty dollars (\$30). ()
- c.** Matchmaker - one hundred dollars (\$100). ()
- d.** Promoter - five hundred dollars (\$500). ()
- e.** Sanction permit - twenty-five dollars (\$25). ()
- 02. Renewal of License/Permit.** Annual renewal fee: ()
- a.** Combatant - thirty dollars (\$30). ()
- b.** Non-combatant - thirty dollars (\$30). ()
- c.** Matchmaker - fifty dollars (\$50). ()
- d.** Promoter - one hundred dollars (\$100). ()

105. HONORING ACTIONS OF REGULATORY AGENCIES IN OTHER JURISDICTIONS.

The Commission may honor the following actions of agencies in other jurisdictions which regulate boxing, ~~or~~ wrestling, or martial arts: ~~(3-3-94)~~()

- 01. Suspension.** A suspension of a ~~contestant~~ combatant ordered for: ~~(3-3-94)~~()
- a.** Medical safety; (3-3-94)
- b.** A violation of a law or rule governing boxing, ~~or~~ wrestling, or martial arts which also exists in this state; or ~~(3-3-94)~~()
- c.** Any other conduct which discredits boxing, ~~or~~ wrestling, or martial arts, as determined by the Commission. ~~(3-3-94)~~()

~~02. Passbook Refused for Medical Safety. The refusal to issue a passbook to an applicant on the basis of medical safety. (3-3-94)~~

106. TIME BETWEEN CONTESTS.

Without the special permission of the Commission, a ~~boxer~~ combatant may not compete in this state unless: ~~(3-3-94)~~()

- 01. Four Days.** Four (4) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted not more than four (4) rounds. ~~(3-3-94)~~()
- 02. Seven Days.** Seven (7) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted five (5) or six (6) rounds. ~~(3-3-94)~~()
- 03. Fourteen Days.** Fourteen (14) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted ~~nine (9) or ten (10)~~ seven (7) or eight (8) rounds. ~~(3-3-94)~~()
- 04. Twenty-One Days.** Twenty-one (21) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted nine (9) or ten (10) rounds. ~~(3-3-94)~~()

05. **Forty-Five Days.** Forty-five (45) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted eleven (11) or twelve (12) rounds. (3-3-94)(____)

06. **Sixty Days.** Sixty (60) days have elapsed since ~~his~~ the combatant's last contest if the contest lasted thirteen (13), fourteen (14), or fifteen (15) rounds. (3-3-94)(____)

107. **FEMALE ~~BOXERS~~ COMBATANTS.**

01. **~~Qualified as a Boxer~~ Qualifications.** A female ~~boxer~~ combatant must be qualified to perform as a ~~boxer~~ combatant before she enters a contest. (3-3-94)(____)

02. **Limitation.** A female ~~boxer~~ combatant shall not engage in a contest with a male ~~boxer~~ combatant. (3-3-94)(____)

03. **General Requirements.** In addition to meeting such requirements of this chapter as are applicable to ~~boxers~~ combatants generally, a female shall: (3-3-94)(____)

a. Use a mouthpiece specially designed for her mouth; (3-3-94)

b. Wear ten (10) ounce gloves in a boxing contest; (3-3-94)(____)

c. Wear a breast protector as a binder; (3-3-94)

d. Have her hair secured in a manner that does not interfere with the vision or safety of either ~~contestant~~ combatant; and (3-3-94)(____)

~~e. Use a minimum of cosmetics; and~~ (3-3-94)

~~f. For each contest in which she competes, have two (2) uniforms in contrasting colors, each uniform consisting of a body shirt, blouse, and shorts.~~ (3-3-94)

04. **Addendum Requirement.** A female ~~boxer~~ combatant shall, in addition to signing the contract, sign an addendum ~~indicating~~ certifying that ~~to her knowledge she~~ the combatant is not pregnant and that the contest will not take place during a menstrual period. (3-3-94)(____)

05. **Limitation on Contest.** A contest between female ~~boxers~~ combatants must be limited to ten (10) rounds ~~or of~~ two (2) minutes duration. (3-3-94)(____)

06. **Separate Dressing Rooms.** The promoters of a contest between female ~~boxers~~ combatants shall provide them with adequate separate dressing rooms. (3-3-94)(____)

07. **Annual Physical Examination.** The annual physical examination of a female ~~boxer~~ combatant shall include an examination of the pelvis. Before each contest, the examining physician shall make an abdominal examination and shall examine the breasts and note any masses. (3-3-94)(____)

108. **REQUIREMENTS FOR LICENSE AS A PROMOTER.**

01. **Requirements.** Any person applying for a license as a promoter may be required to appear before the Commission and be prepared to prove his: (3-3-94)

a. Integrity; (3-3-94)

b. Financial stability; and (3-3-94)

c. Knowledge of the responsibilities involved in the promotion of ~~boxing and wrestling~~ relevant combative programs. (3-3-94)(____)

02. Provide Waivers. The applicant, or a person he has designated if approved by the Commission, must provide all waivers necessary to the conduct of the Commission's investigation of the applicant's suitability. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

110. REQUIREMENTS FOR LICENSE AS REFEREE, JUDGE, ~~OR~~ TIMEKEEPER, OR GLOVER ~~AND LICENSING REQUIREMENTS.~~

01. Qualifications. To qualify for a license as a glover, referee, judge, or timekeeper of boxing contests, an applicant must: (3-3-94)(____)

a. Be at least twenty-one (21) years of age; (3-3-94)

b. Have no record of conviction of a felony or other crime involving moral turpitude unless approved by the commission; (3-3-94)(____)

c. Have had at least one (1) year experience in either amateur or professional boxing as a glover, referee, judge, or timekeeper, whichever is appropriate; (3-3-94)(____)

d. Submit verifications from three (3) persons of his proficiency as a glover, referee, judge, or timekeeper, whichever is appropriate; and (3-3-94)(____)

e. *Except as otherwise provided in this section, successfully pass the Commission annual examination and successfully complete an internships established by the Commission.* Provide proof that the applicant meets the other requirements of the commission law and rules. (3-3-94)(____)

02. Equivalent Qualifications. In lieu of the examination and internship, the Commission may accept satisfactory evidence of equivalent qualifications possessed by an applicant who: (3-3-94)

a. Is currently licensed in another state or country; or (3-3-94)

b. Formerly held an Idaho license which lapsed in good standing. (3-3-94)(____)

03. Other Functions. A person holding a current Idaho license or who formerly held an Idaho license which lapsed in good standing may be licensed by the Commission without examination or internship to perform an officiating function other than that for which he is or was licensed if the Commission determines that he is qualified to perform that function. (3-3-94)

04. Ring Officials Determination. The Commission will determine when additional ring officials are needed and when licensing examinations for ring officials will be conducted. (3-3-94)

05. Validity of Licenses. Each license issued *pursuant to this section is valid until December 31 of each year by the commission shall be annually renewable in accordance with Section 67-2614, Idaho Code. An application for renewal must be submitted to the Commission by December 1 of each year accompanied by the appropriate renewal fee.* The renewal of a license is not automatic. The applicant's past performance and abilities may be considered in evaluating *his* an application for renewal. (3-3-94)(____)

111. REQUIREMENTS FOR ~~LICENSE AS~~ RINGSIDE PHYSICIAN.

~~**01. Licensed Annually.** Ringside physicians shall be licensed annually as need for their services is determined by the Commission.~~ (3-3-94)

02. Board of Medicine. Ringside physicians shall be currently licensed by the Idaho Board of

Medicine. (3-3-94)

~~03. **Not Automatic Renewal.** The renewal of a license as a ringside physician is not automatic. The applicant's past performance and abilities may be considered in evaluating his application for renewal. (3-3-94)~~

042. Cardiopulmonary Resuscitation. A ringside physician must be certified ~~annually~~ to perform cardiopulmonary resuscitation. (3-3-94)()

(BREAK IN CONTINUITY OF SECTIONS)

113. GROUNDS FOR DENIAL OR REVOCATION OF LICENSE.

The Commission may deny an application or suspend or revoke a license or take such other disciplinary action deemed appropriate if it finds that the applicant or licensee or any partner, officer, director, stockholder, or employee of the applicant or licensee has: (3-3-94)()

01. Subject to Discipline. Performed any act which ~~would, if performed by a licensee, subject the licensee to discipline pursuant to Subsection 100.02; or~~ constitutes a violation of the laws or rules of the commission. (3-3-94)()

02. ~~Other Dealings~~ Specific Conduct. ~~Knowingly dealt or consorted with any person who:~~ (3-3-94)()

a. Has been convicted of a felony; (3-3-94)

b. Engages in illegal bookmaking; (3-3-94)

c. Engages in any illegal gambling activity; (3-3-94)

d. ~~Is a reputed underworld character~~ Engages in any fraud or misrepresentation in the application process; (3-3-94)()

e. Has a recent history of drug abuse or fails a drug test or refuses to submit to a drug test; (3-3-94)()

f. Is under suspension from any other commission; or (3-3-94)

g. Is engaged in any activity or practice which is detrimental to the best interests of ~~boxing~~ a contest regulated by the commission. (3-3-94)()

~~**114. PROCEDURE AFTER LICENSE HAS BEEN DENIED OR REVOKED.**~~

~~**01. Denial.** Any applicant who has been denied a license by the Commission may not file a similar application until one (1) year after denial by the Commission. Any application for a license filed within the one (1) year period may be denied without a hearing. (3-3-94)~~

~~**02. Revocation.** Anyone who has had his license revoked may not petition for reinstatement or apply for a new license until one (1) year after the revocation. Any petition for reinstatement or application for license filed within the one (1) year period may be denied without hearing. (3-3-94)~~

~~**1154. -- 1949. (RESERVED).**~~

150. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 150).

01. Expiration Date. All licenses expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Licenses not renewed prior to expiration shall be cancelled. ()

02. Reinstatement. Any license canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. ()

03. Cancelled License. A license that has been canceled for a period of more than five (5) years may be re-issued in accordance with section 67-2614, Idaho Code. ()

151. -- 199. (RESERVED).

200. CONTRACT BETWEEN MANAGER AND ~~BOXER~~ COMBATANT.

01. Contractual Obligations. The Commission may refuse to honor a contract between a manager and a ~~boxer~~ combatant unless it ~~is filed with the Commission at least forty-eight (48) hours before a scheduled contest and it~~ complies with the requirements ~~of this section~~ Section 200 of this rule. ~~The Commission will honor a~~ A contract between a manager and a ~~boxer only if the term of the contract is~~ combatant shall be for a term of not more than four (4) years. Such a contract may contain an option which permits the manager, at the expiration of the initial term, to renew the contract for an additional period of not more than two (2) years. A manager intending to exercise an option to renew shall, at least sixty (60) days before the expiration of the initial term of the contract, send a written notice to the Commission and the boxer of his intent. The renewal shall be deemed effective unless the boxer: (3-3-94)()

~~a. Notifies the Commission in writing that the validity of the contract is currently in litigation in a court of competent jurisdiction; or~~ (3-3-94)

~~b. Has requested arbitration under the provisions of the contract.~~ (3-3-94)

02. After Contract Services. A manager may not contract to receive the services of a ~~boxer~~ combatant under his management for a match which is scheduled to take place after the expiration of the contract. (3-3-94)()

03. Options. A contract between a ~~boxer~~ combatant and a manager may provide for voluntary binding arbitration of disputes by the Commission. If so agreed, the arbitration must be conducted by a member of the Commission mutually agreed upon by the two (2) parties or, if there is no agreement, by a member of the Commission appointed by the chairman. The arbitration must be conducted pursuant to generally accepted arbitration standards. (3-3-94)()

04. Contract Approval. The Commission may approve a contract entered into in another jurisdiction by a person who is not a resident of Idaho if: (3-3-94)

~~a. The contract is on file with and is approved by the body regulating boxing in the other jurisdiction;~~ (3-3-94)
~~and~~

~~b. The terms of the contract comply with the requirements of this section. If the terms of the contract exceed the limitations contained in this section, the Commission may honor the contract to the extent of those limitations.~~ (3-3-94)()

05. Manager Limitations. A manager may not negotiate or sign for matches for a ~~boxer~~ combatant who is not under contract to him. Any ~~boxer~~ combatant who does not have a contract with a licensed manager must sign for his own contest and sign the receipt for his own purse. A manager or managers may not participate separately or collectively in more than thirty-three and one-third percent (33 1/3%) of the ~~boxer~~ combatant's earnings in the ring. (3-3-94)()

~~06. Interest in Contract. An interest which a boxer or a manager has in a contract may not be assigned unless:~~ (3-3-94)

~~a. A copy of the proposed assignment is submitted to the Commission; and~~ (3-3-94)

~~b. The Commission approves the assignment.~~ (3-3-94)

076. Manager Responsibilities. If a manager signs only for a ~~boxer~~ combatant's appearance at a contest, a copy of the manager's authorization to negotiate and sign for the ~~boxer~~ combatant must accompany the contract which he concluded with the promoter. If the manager does not send a copy of his authorization, the Commission may deny any application received from the ~~boxer~~ combatant or manager pending a hearing before the Commission. (3-3-94)(____)

201. MANAGER'S ADVANCES ~~TO BOXER~~ -- ACCOUNTING.

Any manager who advances or lends any money to any ~~boxer~~ combatant or incurs indebtedness on behalf of a ~~boxer~~ combatant shall furnish an accounting in writing to the ~~boxer~~ combatant every ninety (90) days. The accounting must be verified by the manager and set forth each item of indebtedness owed by the ~~boxer~~ combatant, the date that the indebtedness occurred, the purpose of the indebtedness, and the name of the person to whom the debt is owed. (3-3-94)(____)

202. CONTRACT BETWEEN PROMOTER AND ~~BOXER~~ COMBATANT.

01. Gate Receipts. A promoter may not deduct any amount from the gate receipts, other than for any federal taxes and the fees prescribed herein until all ~~boxers~~ combatants who are to be paid a percentage of the receipts have been paid, unless the amount to be paid to the ~~boxer~~ combatant is specified in ~~his~~ the contract. (3-3-94)(____)

02. Contract Prohibitions. (3-3-94)

a. A contract which provides that a ~~boxer~~ combatant must fight exclusively for or at the option of one (1) promoter ~~or at his option~~ is prohibited. (3-3-94)(____)

b. A contract which provides that a ~~boxer~~ combatant is to pay for the services of ~~his~~ an opponent is prohibited. (3-3-94)(____)

203. FILING CERTAIN CONTRACTS WITH COMMISSION.

01. Main and Semi-Main Events. A contract between a promoter and a ~~boxer~~ combatant for the main and semi-main events of a ~~boxing or wrestling~~ program must be placed on file with the Commission at least seven (7) working days before the event unless the Commission gives special approval for filing the contract closer to the time of weighing in. (3-3-94)(____)

02. Other ~~Boxers~~ Combatants. Contracts for all ~~boxers~~ combatants who will be contending in the program must be filed before the scheduled time for weighing in. (3-3-94)(____)

03. Disciplinary Action. A promoter or matchmaker who fails to file a contract for any participant whose name is released to the news media is subject to disciplinary action. (3-3-94)

04. Media Contracts. Any contract by the promoter for the sale, lease or other use of rights to broadcast, televise including a right to make a closed-circuit telecast, or take motion pictures of a ~~boxing or wrestling~~ contest must be placed on file with the Commission at least five (5) working days before the event unless the promoter obtains special approval from the Commission for filing the contract at a time closer to the event. (3-3-94)(____)

204. PERCENTAGE OF GATE RECEIPTS TO ~~BOXER~~ COMBATANT.

Each ~~contestant~~ combatant working on a percentage basis, must be paid on the basis of the net receipts of each exhibition after state and federal taxes, ring expenses and the price of complimentary tickets upon which a price is specified, have been deducted. (3-3-94)(____)

205. PROMOTER'S ADVANCES TO ~~CONTESTANT~~ COMBATANT OR MANAGER OR OCCURRENCE OF DEBT ON HIS BEHALF.

01. Restrictions. A promoter licensed by the Commission shall not directly or indirectly make any loan or advance to any ~~boxer, wrestler~~ combatant or manager except as provided in this rule. (3-3-94)(____)

02. Any Indebtedness Restricted. A promoter shall not, directly or indirectly, create any indebtedness which becomes the obligation of a ~~boxer, wrestler~~ combatant or manager unless the promoter has the express written permission of the Commission for that action. (3-3-94)(____)

206. FAILURE OF ~~CONTESTANT~~ COMBATANT TO APPEAR.

Any ~~contestant~~ combatant who fails to appear in an ~~boxing show~~ event in which the combatant signed a contract to appear, without a written excuse determined to be valid by the Commission or a certificate from a physician designated by the Commission in advance in case of physical disability is subject to disciplinary action. Any ~~boxer~~ combatant who files a certificate from a physician designated by the Commission stating that he is unable to fulfill a contract because of physical disability shall, on being restored to the eligible list, fulfill his contract with the same opponent or a suitable substitute specified in the contract within a reasonable time, that period to be set by the Commission, unless the ~~boxer~~ combatant is released from the contract by mutual agreement. (3-3-94)(____)

207. PAYMENT OF ~~CONTESTANT~~ COMBATANT.

01. Payment in Full. Every ~~contestant~~ combatant must be paid in full according to ~~his~~ the combatant's contract, and no part of ~~his~~ the combatant's remuneration may be withheld except by order of the Commission, nor may any part of ~~his~~ the combatant's remuneration be returned through arrangement with ~~his~~ the combatant's manager to any matchmaker or promoter, except as otherwise provided in this section. (3-3-94)(____)

02. Prior Written Commitments. With the prior written permission of a member of the Commission, a promoter may withhold from the purse of a ~~boxer~~ combatant money advanced to the ~~boxer~~ combatant for transportation and maintenance in preparation for a contest, if their agreement so provides. (3-3-94)(____)

03. Manager's Share. A manager's share of the purse may be deducted and paid directly to the manager if the contract so specifies. (3-3-94)

04. Pending Action. If arbitration of a contract entered into by a manager and ~~boxer~~ combatant is pending before the Commission or if the contract is in litigation in a court of competent jurisdiction, the Commission may: (3-3-94)(____)

a. Withhold the amount in dispute in the Commission's trust fund until resolution of the dispute; or (3-3-94)

b. Pay the disputed amount to the clerk of the court in which the litigation is pending. (3-3-94)

05. Prior Approval of Commission. Neither a ~~contestant~~ combatant nor his manager may assign his share of the purse, or any portion thereof, without the approval of the Commission. If a ~~contestant~~ combatant or manager wants to assign his share of the purse, he must file a written request with the Commission at least seven (7) working days before the contest. (3-3-94)(____)

208. PAYMENT OF PURSE.

01. Payment Made. All payment of purses must be made: (3-3-94)

a. Immediately after the contest or exhibition; or (3-3-94)

b. If the ~~contestant~~ combatant is to receive a percentage of the net receipts, immediately after that percentage is determined by a person designated by the Commission, unless otherwise ordered by the Commission. (3-3-94)(____)

~~**02. Receipts.** Except as otherwise provided, before the start of a contest or exhibition, the promoter shall deliver to the Commission, checks or cash for all payments to the entitled persons. The Commission shall provide the promoter a written receipt for any cash received. (3-3-94)~~

~~**03. Signatures.** Immediately after the contest or exhibition, the person designated by the Commission will release the checks or cash to the entitled persons and will obtain their signatures on a list in which they~~

acknowledge the payment. (3-3-94)

043. Reconciliation. The promoter may withhold an amount of not more than ten percent (10%) of the purse for payment of expenses incurred by the ~~contestant~~ combatant. A reconciliation of those expenses and payment of the undistributed portion of the purse must be made to the Commission on the Commission's form within seven (7) working days after the contest. The reconciliation must bear written approval of the ~~contestant~~ combatant before it is submitted. If good cause is shown, the chairman of the Commission may grant an extension of the date for reconciliation for a period not to exceed thirty (30) days after the contest. (3-3-94)(____)

054. Alternative Payment. The Commission may permit a form of payment other than those specified in this section. A promoter who wishes to pay the purse by an alternative method of payment shall: (3-3-94)

- a. Submit a written ~~application~~ request to the Commission at least thirty (30) days before the contest. (3-3-94)(____)
- b. Describe in detail the alternative method of payment contemplated. (3-3-94)
- c. Show good cause for a waiver of the provisions ~~of as~~ outlined in ~~this~~ Section 208 of this rule. (3-3-94)(____)
- d. Comply with all requirements of the Commission regarding the production of relevant information. (3-3-94)
- e. Follow precisely the procedural directives of the Commission if the request is granted. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

300. SURETY BOND ~~FOR PROGRAM OF BOXING OR WRESTLING~~.

01. Requirement. Every promoter who applies for a license to present a program ~~of boxing or wrestling must~~ or event under the jurisdiction of the commission shall furnish a surety bond to the Commission in an amount deemed by the Commission to be adequate to ensure reimbursement to the purchasers of tickets for the program. (3-3-94)(____)

02. Various Locations. The promoter may apply one (1) bond to more than one (1) location if no more than one (1) location covered by the same bond is scheduled for a program on any given calendar date. (3-3-94)

03. Total Sum. Each bond must be conditioned for the payment to the Commission of a sum equivalent to the total sale of tickets: (3-3-94)

- a. If the main event is not held on the date advertised, unless the event is subsequently held on a date fixed by the Commission; and (3-3-94)
- b. If the main event is neither held on the original date advertised nor on a subsequent date fixed by the Commission. (3-3-94)

04. Sum Due. The sum is due within fifteen (15) days after default, to ensure reimbursement to the purchasers of tickets for the event, if the reimbursement of ticket holders is ordered by the Commission. (3-3-94)

301. APPROVAL OF ~~PROGRAM BY COMMISSION~~ EVENTS.

01. Prior Approval. No contest shall be held without the prior approval of the Commission. A promoter must submit a completed application for a sanctioning permit to hold an event on a specific date, and a permit be issued by the commission before the event may be announced or advertised. Application shall be made on a form provided by the Bureau. (3-3-94)(____)

~~02. **Written Request for Approval.** A request for approval of a date for a program of boxing or wrestling must be made in writing to the Commission at the time the promoter submits his sanction application unless the Commission allows the request for approval of a date to be made at a later time **Deadline.** A complete application for a sanctioning permit together with all requested supporting documentation must be received by the commission no less than thirty (30) days prior to the date requested for the event named in the application.~~

~~(3-3-94)()~~

~~03. **Disciplinary Action Cancellation.** The failure of the promoter to notify the Commission of a cancellation at least seven (7) calendar days before the date for the program will result in the forfeiture of ~~the sanction~~ all fees and ~~may subject the promoter to~~ shall be grounds for disciplinary action.~~

~~(3-3-94)()~~

~~302. **PERMIT REQUIRED PRIOR TO ANNOUNCEMENT OF SPECIFIC DATE FOR CONTEST. (RESERVED).**~~

~~A promoter must apply in writing to the Commission for a permit to hold a contest on a specific date, before he may announce or advertise the contest or exhibition.~~

~~(3-3-94)~~

303. PROGRAM FOR CHARITY.

01. Application. A person who wishes to present a program ~~of boxing or wrestling~~ or event under the jurisdiction of the commission for charitable purposes must file with the Commission a sanction application to present the program. The application must contain the name of the charity, charitable fund or organization which is to benefit from the program and the amount or percentage of the receipts of the program which is to be paid to the charity.

~~(3-3-94)()~~

02. Certified, Itemized Statement. Within seventy-two (72) hours after such a program is held, the promoter shall furnish to the Commission a certified itemized statement of the receipts and expenditures in connection with the program and the net amount paid to the charitable fund or organization. If the promoter fails to file the statement within the prescribed time, the Commission:

(3-3-94)

- a. May suspend or revoke the promoter's license. (3-3-94)
- b. Shall not thereafter issue a permit to the promoter for the holding of any program for charitable purposes. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

305. MANAGERS -- LIMITATIONS ON NUMBER OF ~~BOXERS~~ COMBATANTS.

A manager may not have more than three (3) ~~boxers combatants~~ under ~~his~~ management in any one (1) program unless ~~he has obtained~~ written permission to do so has been obtained from the Commission.

~~(3-3-94)()~~

~~**306. NUMBER OF ROUNDS SCHEDULED ON ONE PROGRAM (RESERVED).**~~

~~A promoter shall not schedule fewer than twenty-five (25) rounds of boxing on any one (1) program.~~

~~(3-3-94)~~

307. CERTAIN PERSONS RETAINED ~~BY PROMOTER~~ MUST HAVE LICENSES.

~~A promoter~~ No person shall ~~not be~~ retained ~~a person~~ for any of the following positions unless ~~he is~~ currently licensed by the Commission:

~~(3-3-94)()~~

01. Referee. (3-3-94)
02. Second. (3-3-94)
03. Timekeeper. (3-3-94)
04. ~~Boxer~~ Combatant. ~~(3-3-94)()~~

05. ~~Wrestler~~ Glover. (3-3-94)()
06. Matchmaker. (3-3-94)
- ~~07. Physician.~~ (3-3-94)
- ~~08. Judge.~~ (3-3-94)

308. OFFICIALS OF BOXING OR WRESTLING MATCHES.

01. **Officials Described.** The officials of boxing and wrestling matches are the referee, judges, timekeeper, physician, and the Commission's representative agents. (3-3-94)()

02. **Commission Involvement.** All the officials ~~are~~ shall be approved and assigned by the Commission. The promoter may select the announcer, subject to the Commission's approval. (3-3-94)()

309. REFEREES.

01. **Selection.** The Commission ~~will~~ shall select the referee for the main event in championship ~~contests~~ events and for ~~contests which~~ events that the Commission considers to be special events. The Commission ~~will shall~~ set the fee ~~which and reasonable expenses that~~ the referee is entitled to receive for an event. (3-3-94)()

02. **Protests.** If any licensee of the Commission protests the assignment of a referee, the protesting licensee will be given a hearing by the Commission if time permits. If time does not permit, the matter will be heard by two (2) Commissioners in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be summarily rejected. (3-3-94)

03. **Physical Examination.** Each referee licensed by the Commission must annually undergo a complete physical examination, including an eye examination conducted by an optometrist or ophthalmologist. The licensee must produce all records of the examination at the request of the Commission. (3-3-94)

310. JUDGES.

01. **Selection.** The Commission will select the judges for the main event in championship ~~contests~~ events and for any other ~~contests~~ events which the Commission considers to be special events. (3-3-94)()

02. **Protests.** If any licensee of the Commission protests the assignment of a judge, the protesting license will be given a hearing by the Commission if time permits. If time does not permit, the matter will be heard by two (2) Commissioners in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be summarily rejected. (3-3-94)

03. **Fees.** The Commission will set the fee and reasonable expenses which the judges are entitled to receive for an event. (3-3-94)()

04. **Station of Judges.** The judges must be stationed ringside at places designated by the Commission. (3-3-94)

05. **Physical Examination.** Each judge licensed by the Commission may be required to submit to or provide proof of a complete physical examination, including an eye examination. (3-3-94)

311. ADMISSION OF ~~CERTAIN LICENSEES AND AGENTS TO PROGRAM~~ **EVENTS.**

The promoter of ~~a boxing program~~ any event under the jurisdiction of the commission shall admit the following to ~~#~~ any referee, judge, ringside physician, inspector, or timekeeper said event without a ticket: ()

01. **Participants.** Any individual who is licensed by the Commission and ~~presents his card evidencing that~~ who has been authorized by the commission to participate in said event upon such individual's presentation of a

current and valid license issued by the commission. (3-3-94)()

02. Commissioner or Agent. The Athletic Commissioner, any Deputy Commissioner, and any agent of the Bureau upon presentation of valid identification that identifies the holder as a member of the commission or an agent of the Bureau. ()

312. PAYMENT OF FEE TO OFFICIAL DESIGNATED BY COMMISSION.

A promoter must pay the fee and reasonable expenses set by the Commission to any person whom the Commission directs to officiate in an contest or exhibition of boxing or wrestling event promoted by that promoter. (3-3-94)()

313. POSTPONEMENT OF PROGRAM.

01. Prior Approval. A promoter may not postpone a program of boxing or wrestling sanctioned event unless the postponement is approved by the Commission. (3-3-94)()

02. No Fault Postponement. If a postponement of a program sanctioned event becomes necessary through no fault of the promoter, the Commission will grant an extension of the contracts and set a new date. (3-3-94)()

03. Limitations on Postponement. A small advance sale is not a legitimate reason for postponement. Indoor boxing and wrestling programs may not be called off or canceled on account of storms or for any other reason not expressed in this chapter except with an affirmative vote by at least a majority of as approved by the Commission. (3-3-94)()

04. Advance Notice. A boxing or wrestling program sanctioned event must not be called off by the promoter without one (1) week prior written approval of the Commission. (3-3-94)()

314. MAIN AND SEMI-MAIN BOXING EVENTS.

This section applies to the main and semi-main events in a program of boxing. (3-3-94)

01. Notice. The promoter shall request Commission approval of any change in an announced or advertised program for the main and semi-main events in a program of boxing at least one (1) week before the contest event. Notice of any change or substitution must also be conspicuously posted at the box office of the premises where the program is to be held and announced from the ring before the opening contest. (3-3-94)()

02. Refunds. If such change occurs and any patron desires to have the price of his a refund of the ticket refunded price, the promoter must provide a refund the patron's money if he presents his upon presentation of the ticket or the ticket stub at the box office before the contest event is scheduled to begin. The box office must remain open a reasonable length of time to redeem such tickets. (3-3-94)()

03. Substitutions. A boxer combatant may not substitute for another boxer combatant in a contest which is the main and semi-main events in a program of boxing unless the Commission approves the substitution. (3-3-94)()

315. BOXER COMBATANT NOT USED IN PROGRAM MUST BE USED IN NEXT PROGRAM OR REIMBURSED.

If a promoter engages a boxer combatant for a contest in a program of boxing but does not use him in that program the scheduled event, he must be used in the next program event staged by the promoter or be reimbursed pursuant to their contract. (3-3-94)()

(BREAK IN CONTINUITY OF SECTIONS)

401. APPROVAL OF FACILITIES BY COMMISSION BEFORE TICKETS MAY BE SOLD.

The sale of tickets for any proposed contest or exhibition is prohibited until: (3-3-94)

01. Approval. Plans and statements showing the seating arrangements, ~~and~~ the location of tickets of each price, and other aspects of the physical layout of the ring and apron have been approved by the Commission; and (3-3-94)(____)

02. Other Considerations. The aisle spacing, exit facilities, and the location of appliances to extinguish fires have been approved by the appropriate county or municipal authority. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

405. COMPLIMENTARY TICKETS.

01. Limitation. A promoter may not issue complimentary tickets for more than two percent (2%) of the seats in the house without the Commission's written authorization. The Commission does not consider complementary tickets which it authorizes under this section to constitute part of the total gross receipts from admission fees for the purposes of calculating the Commission taxes. (3-3-94)

02. More Than Two Percent Issued. If complimentary tickets are issued for more than two percent (2%) of the ~~seats in the house~~ tickets sold: (3-3-94)(____)

a. Each ~~boxer or wrestler~~ combatant who is working on a percentage must be paid his percentage of the normal price of all complimentary tickets in excess of two percent (2%) of the ~~seats in the house~~ tickets sold unless the contract between him and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued; and (3-3-94)(____)

b. If a service charge is made for complimentary tickets, the ~~boxer or wrestler~~ combatant is entitled to be paid his percentage of that service charge, less any deduction for federal taxes and fees. (3-3-94)(____)

406. PROVISIONS OF TICKETS WITHOUT CHARGE OR AT REDUCED RATES.

01. Without Charge. Each promoter shall provide tickets without charge to: (3-3-94)

~~a. The Commission's members and representatives;~~ (3-3-94)

~~b. Principals and seconds who are engaged in a contest which is part of the program; and~~ (3-3-94)

~~c. H~~holders of lifetime passes issued by the Commission. (3-3-94)(____)

02. No Fees. Persons who receive tickets pursuant to this section are not liable for the payment of any fees for those tickets. (3-3-94)

03. Optional Charges. Each promoter may provide tickets without charge or at a reduced rate to: (3-3-94)

a. Any of his employees, and if the promoter is a corporation, to a director or officer, who is regularly employed or engaged in promoting such programs, whether or not his duties require him to be admitted to the particular program and whether or not he is on duty at the time of that program; (3-3-94)

b. A journalist who is performing his duties as such; and (3-3-94)

c. A fireman or police officer who is performing his duties as such. (3-3-94)

04. Duties Required. Each promoter shall perform the following duties in relation to the issuance of complimentary tickets issued: (3-3-94)

a. Each ticket issued to a journalist must be clearly marked "PRESS." No more tickets may be issued

to journalists than will permit comfortable seating in the press area. (3-3-94)

b. The promoter may allocate seats for the media, subject to the commission's final approval of the allocation. Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest and to other persons designated by the Commission. (3-3-94)()

c. A list of passes issued to journalists must be submitted to the Commission. (3-3-94)

d. Only one (1) complimentary ticket may be issued to any one (1) manager, second, ~~boxer, wrestler~~ combatant, or other person licensed by the Commission. (3-3-94)()

e. Any credential issued by the promoter which allows an admission to the event without a ticket must be approved in advance by the Commission. Requests for the issuance of such credentials must be made at least five (5) hours before the first contest on the program. (3-3-94)

05. **Admission Criteria.** Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this section is a grounds for suspension or revocation of the promoter's license or the assessment of a penalty. (3-3-94)()

06. **Fees.** The Commission shall collect all fees and taxes due on any ticket which is not specifically exempt pursuant to this section, and for any person who is admitted without a ticket in violation of this section. (3-3-94)

~~407. ALLOCATION OF SEATS FOR MEDIA.~~

~~The promoter may allocate seats for the media, subject to the Commission's final approval of the allocation. (3-3-94)~~

~~408. SPECULATION IN TICKETS PROHIBITED.~~

01. **Prevent Speculation.** A promoter who holds ~~boxing or wrestling matches~~ programs or events under the jurisdiction of the commission shall exercise extraordinary caution to prevent speculation in tickets. (3-3-94)()

02. **No Other Price.** The promoter may not sell any tickets for a price other than the price printed thereon. ()

a. The promoter may not, without the Commission's written permission, change the price of tickets at any time after they have been placed on sale or sell them at any time during the program for less a different price than tickets for the same seats were offered or sold before the program commenced. (3-3-94)()

~~409. TICKETS SOLD AT REDUCED PRICE.~~

b. Any ticket ~~for a boxing event~~ sold for less other than the price printed on the ticket must be over stamped with the actual price charged. The over stamp must be placed on the printed face of the ticket as well as the stub retained by the holder of the ticket. (3-3-94)()

~~410. TICKETS — EXCHANGE, REDEMPTION AND RETURN.~~

03. **Exchange.** A person may only exchange tickets at the box office. A ticket may not be redeemed after the show has taken place. Tickets ~~which agencies that~~ have not sold must be returned to the box office not later than one (1) hour before the show is scheduled to begin. (3-3-94)()

~~411. TICKETS — REMOVAL AND POSSESSION OF STUB.~~

04. **Removal and Possession of Stub.** A holder of a ticket for a program ~~of boxing or wrestling or~~ event must not be allowed: (3-3-94)()

04a. **Gate.** To pass through the gate of the premises where the program is being held unless his ticket is separated from the stub; or (3-3-94)()

04b. **Occupy Seat.** To occupy a seat unless he is in possession of the stub. (3-3-94)()

05. Tickets for Readmission. A promoter may not issue a ticket to any person for the purpose of readmission due to leaving the arena and later reentering the arena, unless the promoter has obtained the commission's written permission for such an issuance. ()

408. -- 411. (RESERVED).

412. DUTIES OF USHERS AND DOORMEN; RESPONSIBILITY OF PROMOTER.

01. Usher Duties. An usher shall see that: (3-3-94)
- a. Patrons get the seats corresponding with their ticket stubs; and (3-3-94)
 - b. Anyone who occupies a seat for which he does not have the ticket stub is asked to vacate or, if necessary, is ejected. (3-3-94)
02. Promoter Responsibilities. The promoter is subject to disciplinary action by the Commission if: (3-3-94)
- a. Any usher allows an unsold seat to be occupied by a patron not holding a stub for the seat. (3-3-94)
 - b. Any doorman admits entrance to a program or event to any person, other than members of the commission, agents of the Bureau, or participants, without a ticket to the program for said program or event. (3-3-94)()

413. ~~TICKETS FOR READMISSION (RESERVED).~~

~~A promoter may not issue a ticket to a person for the purpose of readmitting him if he leaves the arena and then wishes to reenter the arena, unless the promoter has obtained the Commission's written permission for such an issuance.~~ (3-3-94)

414. TICKETS -- SEALING IN CANS DURING ~~BOU~~ CONTEST; COUNTING.

The ~~representatives of the~~ Commission may check numbers and places of ~~eans~~ containers for tickets at gates and have the ~~eans~~ containers sealed and padlocked. After the ~~show program or event~~ the ~~representatives~~ Commission may require the ~~eans~~ containers to be opened and the tickets counted under ~~their~~ its supervision. (3-3-94)()

415. TICKETS -- REMOVAL AND RETENTION AFTER MATCH; DESTRUCTION.

01. Removal. All tickets and stubs sold or unsold, other than unsold reel tickets, used for any ~~boxing contest or wrestling exhibition~~ program or event may be removed to the office of the ~~Commission~~ Bureau by a ~~representative of~~ the Commission after the ~~promoter and representative have~~ Commission has completed the computation of gate receipts and tax due thereon. (3-3-94)()

02. Destruction. After the tickets and stubs have been held for at least fifteen (15) days by the Commission, the Commission will destroy them. If the tickets are not taken by the ~~representative~~ Commission, they must be retained by the promoters for at least six (6) months. Those tickets may be destroyed after they have been held for at least thirty (30) days and written permission has been granted by the Commission for the destruction of such tickets. Tickets must be kept in separate packages for each show so that an audit can be made at any time by the Commission. (3-3-94)()

416. -- 499. (RESERVED).

500. SANITATION.

01. Sanitary Conditions. Each promoter ~~is~~ shall be responsible for and must correct any violation of the regulations of the Commission or the ~~state board of~~ public health district regarding the sanitary condition of dressing rooms, showers, water bottles, towels or other equipment. (3-3-94)()

02. Reporting. Physicians and the Commission or its agents shall make a particular examination before or during each program ~~of boxing or wrestling~~ or event to discover any violation of such regulations, and any such violation must be reported to the Commission immediately. (3-3-94)(____)

501. REQUIRED NUMBER OF AMBULANCES; NOTICE TO AMBULANCE SERVICE AND HOSPITAL.

01. Required Number of Ambulances. The following number of ambulances must be present at the site of any program ~~of boxing or wrestling involving full contact~~ or event under the jurisdiction of the commission: (3-3-94)(____)

a. Where the anticipated attendance is four thousand (4,000) persons or more but less than eight thousand (8,000) persons, one (1) ambulance is required. (3-3-94)

b. Where the anticipated attendance is eight thousand (8,000) persons or more, two (2) ambulances are required. (3-3-94)

02. Promoter Requirements. Each promoter of ~~such~~ a program or event shall, without regard to the size of the anticipated attendance: (3-3-94)(____)

a. Give notice of the time, date and site of the program to the ambulance service or emergency medical service which is located nearest to the site of the program and ascertain from the service the length of time required for one (1) of its ambulances to reach the site. (3-3-94)

b. Give such a notice to the nearest hospital and the persons in charge of its emergency room. (3-3-94)

c. Before the start of the program or event, certify to a member of the Commission that the requirements of this section have been met. (3-3-94)(____)

502. DRESSING ROOMS -- ONLY AUTHORIZED PERSONS ARE ALLOWED TO ENTER.

01. Authorized Persons to Enter. On the day of a contest only the following people are allowed in the dressing room of a ~~boxer~~ combatant; (3-3-94)

a. The ~~boxer~~ combatant's manager; (3-3-94)(____)

b. The ~~boxer~~ combatant's seconds; (3-3-94)(____)

c. Any ~~representative~~ authorized agent of the promoter; and (3-3-94)(____)

d. ~~Any representative~~ Members of the Commission or its agent. (3-3-94)(____)

02. Other Persons. The promoter shall furnish a doorman or doormen at the entrance to the dressing rooms to enforce this section. (3-3-94)

503. BOXING GLOVES.

The gloves used in a boxing contest must meet the following requirements: (3-3-94)

01. General. The gloves must be examined by ~~the representative of~~ the Commission and the referee. If padding in any of the gloves is found to be misplaced or lumpy or if any of the gloves are found to be imperfect, they must be changed before the contest starts. No breaking, roughing or twisting of gloves is permitted. (3-3-94)(____)

02. Glove Specifications. The gloves for every main event must be new, of the same brand for both combatants, furnished by the promoter, and of the size specified by the Commission. (3-3-94)(____)

03. Sanitary. If gloves to be used in preliminary ~~bouts~~ contests have been used before, they must be

whole, clean and in sanitary condition. The gloves are subject to inspection by the referee or ~~representative of~~ the Commission. If found to be unfit, they must be immediately discarded and replaced with gloves meeting the requirements of this section. (3-3-94)(____)

04. Extra Set. Each promoter must have an extra set of gloves of the appropriate weight available at the glove table to be used in case gloves are broken or otherwise damaged during the course of a ~~bout~~ contest. (3-3-94)(____)

05. Weight of Gloves. Each ~~contestant~~ combatant must wear gloves which weigh not less than eight (8) ounces and not more than ten (10) ounces except that the Commission will set the weight of gloves to be used in a championship fight. Eight (8) ounce gloves shall be used for all weight classes through Middleweight. Super middleweight and above shall use ten (10) ounce gloves. (3-3-94)(____)

06. Distal Portion. All gloves must have the distal portion of the thumb attached to the body of the glove so as to minimize the possibility of injury to an opponent's eye. (3-3-94)

504. BANDAGING OF ~~BOXER~~ COMBATANT'S HANDS.

01. General. Bandages may not exceed one (1) winding of surgeon's adhesive tape, not over one and one-half (1 1/2) inches wide, placed directly on the hand to protect the part of the hand near the wrists. The tape may cross the back of the hand twice but may not extend within three-fourths (3/4) inch of the knuckles when the hand is clenched to make a fist. (3-3-94)

02. Additional Requirements. Each ~~contestant~~ combatant shall use soft surgical bandage not over two (2) inches wide, held in place by not more than six (6) feet of surgeon's adhesive tape for each hand. Up to one (1) fifteen (15) yard roll of bandage may be used to complete the wrappings for each hand. Strips of tape may be used between the fingers to hold down the bandages. (3-3-94)(____)

03. Witnesses. Bandages must be adjusted in the dressing room in the presence of ~~a representative of~~ the Commission and both ~~contestant~~ combatants. Either ~~contestant~~ combatant may waive his privilege of witnessing the bandaging of the opponent's hands. (3-3-94)(____)

505. EQUIPMENT OF THE CHIEF SECOND.

01. Equipment. The chief second shall equip himself with: (3-3-94)

a. A clear plastic water bottle; (3-3-94)

b. A bucket containing ice; (3-3-94)

c. A solution of a kind approved by the Commission for stopping hemorrhaging; (3-3-94)

d. Adhesive tape; (3-3-94)

e. Gauze; (3-3-94)

f. Scissors; and (3-3-94)

g. One (1) extra mouthpiece. (3-3-94)

02. Ammonia. No ammonia may be used in the ring. (3-3-94)

03. Ring Physician. The ring physician or the Commission's ~~representative~~ may at any time inspect the contents of the chief second's first-aid kit. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

508. EQUIPMENT OF A TIMEKEEPER.

Every timekeeper shall have the equipment prescribed by the Commission and shall carry out the duties directed by the ~~representative of the~~ Commission. (3-3-94)(____)

509. -- 599. (RESERVED).

600. WEIGHTS AND CLASSES OF ~~BOXERS~~ COMBATANTS.

- 01. Classes and Weights.** The classes and weights for each class are shown in the following schedule: (3-3-94)
- a.** Strawweight -- up to one hundred five (105) pounds. (3-3-94)
 - b.** Light-Flyweight -- over one hundred five (105) to one hundred eight (108) pounds. (3-3-94)
 - c.** Flyweight -- over one hundred eight (108) to one hundred twelve (112) pounds. (3-3-94)
 - d.** Super Flyweight -- over one hundred twelve (112) to one hundred fifteen (115) pounds. (3-3-94)
 - e.** Bantamweight -- over one hundred fifteen (115) to one hundred eighteen (118) pounds. (3-3-94)
 - f.** Super Bantamweight -- over one hundred eighteen (118) to one hundred twenty-two (122) pounds. (3-3-94)
 - g.** Featherweight -- over one hundred twenty-two (122) to one hundred twenty-six (126) pounds. (3-3-94)
 - h.** Super Featherweight -- over one hundred twenty-six (126) to one hundred thirty (130) pounds. (3-3-94)
 - i.** Lightweight -- over one hundred thirty (130) to one hundred thirty-five (135) pounds. (3-3-94)
 - j.** Super Lightweight -- over one hundred thirty-five (135) to one hundred forty (140) pounds. (3-3-94)
 - k.** Welterweight -- over one hundred forty (140) to one hundred forty-seven (147) pounds. (3-3-94)
 - l.** Super Welterweight -- over one hundred forty-seven (147) to one hundred fifty-four (154) pounds. (3-3-94)
 - m.** Middleweight -- over one hundred fifty-four (154) to one hundred sixty (160) pounds. (3-3-94)
 - n.** Super Middleweight -- over one hundred sixty (160) to one hundred sixty-eight (168) pounds. (3-3-94)
 - o.** Light-Heavyweight -- over one hundred sixty-eight (168) to one hundred seventy-five (175) pounds. (3-3-94)
 - p.** Cruiserweight -- over one hundred seventy-five (175) to one hundred ninety-five (195) pounds. (3-3-94)
 - q.** Heavyweight -- all over one hundred ninety-five (195) pounds. (3-3-94)
- 02. Exceeding Weight Allowances.** No contest may be scheduled and no ~~contestant~~ combatant may

engage in a boxing contest without the approval of the Commission ~~or the Commission's representative~~ if the difference in weight between ~~contestant~~ combatants exceeds the allowance shown in the following schedule:

(3-3-94)(____)

- a. Up to one hundred eighteen (118) pounds -- not more than three (3) pounds. (3-3-94)
- b. One hundred eighteen (118) to one hundred twenty-six (126) pounds -- not more than five (5) pounds. (3-3-94)
- c. One hundred twenty-six (126) to one hundred thirty-five (135) pounds -- not more than seven (7) pounds. (3-3-94)
- d. One hundred thirty-five (135) to one hundred forty-seven (147) pounds -- not more than nine (9) pounds. (3-3-94)
- e. One hundred forty-seven (147) to one hundred sixty (160) pounds -- not more than eleven (11) pounds. (3-3-94)
- f. One hundred sixty (160) to one hundred seventy-five (175) -- not more than twelve (12) pounds. (3-3-94)
- g. One hundred seventy-five (175) to one hundred ninety-five (195) pounds -- not more than twenty (20) pounds. (3-3-94)
- h. One hundred ninety-five (195) pounds and over -- no limit. (3-3-94)

03. Weigh-Ins on Day of Contest. If a weigh-in is scheduled on the day of the contest, weight loss in excess of two (2) pounds after the time of the weigh-in is not permitted. (3-3-94)

601. CHAMPIONS.

01. General. This section applies to a boxer who has been declared the champion of his class. (3-3-94)

02. Title Not at Stake. A champion may engage in a contest in which his title is not at stake if the Commission consents to the contest. (3-3-94)

03. Title at Stake. The title of a champion is at stake if at the official weigh-in ~~shows~~ his opponent shows and is determined to be within the maximum weight limit of the class. Contests for the championship of the state must be held at twelve (12) rounds. If a champion in a match which has been approved by the Commission for the championship of the state has, within two (2) hours after the scheduled time for the weigh-in, failed to make the specified weight, his title must be declared vacant. (3-3-94)(____)

04. Fighting a Boxer from Heavier Class. The Commission may permit a champion to fight a boxer belonging to a heavier class, but no restriction of minimum weight may be placed on the opponent to prevent his weighing in as a contender for the title. The difference in weight between the ~~contestant~~ combatants may not exceed twenty (20) pounds unless both weigh over one hundred ninety-five (195) pounds. (3-3-94)(____)

05. Commission Names Champions. The Commission may name professional boxing champions of the state each year in each weight class. A championship may be lost by default, forfeit or inability to make the weight, but a championship may only be won in a contest. (3-3-94)

06. Defending a Title. The titles of champions of the state must be defended at least once every six (6) months. If a boxer does not defend his title within this period, his title is automatically vacated. (3-3-94)

07. Presentation of Championship Belt to Commission Before Title Contest. Every boxer who holds a belt for winning the championship of the state must present the belt to the Commission's ~~representative~~ when the title is being defended. Any donor of a championship belt must be approved by the Commission. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

604. WEIGHING IN OF ~~CONTESTANTS~~ COMBATANTS.

01. **Attendees and Scales Used at Weigh-In.** Each ~~contestant~~ combatant must be weighed in the presence of the public, the other ~~contestant~~ combatant, ~~a representative of~~ the Commission and an official representing the promoter, on scales approved by the Commission at any place designated by the Commission.

(3-3-94)(____)

02. **Attire.** The boxer must have all weights stripped from his body before he is weighed in, but he may wear shorts. (3-3-94)

03. **Attendance by Media.** Representatives of newspapers and the electronic news media who ~~properly identify themselves~~ provide official identification as such ~~must~~ shall be admitted to each official weighing in of a ~~contestant~~ combatant.

(3-3-94)(____)

04. **Security.** The owner or operator of the premises in which the weighing in is held shall provide adequate security for the ~~contestant~~ combatant and other persons who are present.

(3-3-94)(____)

605. FORFEITURE FOR FAILURE TO MAKE WEIGHT.

01. **Failure to Make Weight.** Any ~~boxer~~ combatant who fails to make the weight agreed upon in his contract forfeits:

(3-3-94)(____)

a. Ten percent (10%) of his purse if no lesser amount is set by the ~~Commissioner's representative~~; or

(3-3-94)(____)

b. A lesser amount set by the Commission, unless the weight difference is one (1) pound or less. (3-3-94)

02. **Dividing Forfeit.** A forfeit must be divided equally between the other ~~boxer~~ combatant and the Commission.

(3-3-94)(____)

03. **Exception.** Except as otherwise provided, if, during the two (2) hours following the time of the weigh-ing, a ~~boxer~~ combatant is able to make the weight or weighs less than one (1) pound outside the agreed limits, no forfeit may be imposed or fine assessed upon him.

(3-3-94)(____)

606. ~~PHYSICAL AND EYE EXAMINATION OF CONTESTANTS~~ COMBATANTS AT TIME OF WEIGHING-IN.

A physician designated by the Commission shall give each ~~contestant~~ combatant a thorough physical and eye examination at the time of his weigh-ing before the ~~bout~~ contest.

(3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

608. PHYSICIAN'S DETERMINATION OF FITNESS OF ~~CONTESTANTS~~ COMBATANTS AND REFEREE; CERTIFICATION; REPORT.

01. **Determination of Physician.** The physician who examines any ~~contestant~~ combatant or referee who has contracted to participate in a boxing program shall determine that a ~~contestant~~ combatant or referee shall not participate in the program and shall immediately report ~~his~~ such finding to the promoter and ~~the~~ the Commission's ~~representative~~ if:

(3-3-94)(____)

a. The ~~contestant~~ combatant is unfit for competition; or (3-3-94)(____)

b. The referee is unfit for officiating. (3-3-94)

02. Written Certification. If the examining physician finds that the ~~contestant~~ combatants and referees are in good physical condition, the physician shall, one (1) hour before the start of the boxing program, give written certification of those findings to the Commission's ~~representative~~. (3-3-94)(____)

03. Physician's Written Report. Within twenty-four (24) hours after the program ends, the physician shall mail or deliver to the Commission his written report on every licensee he examined. The report must be on a form furnished by the Commission. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

700. ~~CONTESTANT~~ COMBATANTS MUST REPORT.

Each ~~contestant~~ combatant must report to the ~~representative of the~~ Commission in ~~charge of the~~ dressing rooms at least one (1) hour before his scheduled time of the first match. (3-3-94)(____)

701. BOXER'S COSTUME AND EQUIPMENT.

01. Costume. Each ~~boxer~~ combatant on a program must provide himself with the ring costume selected and approved by the Commission. (3-3-94)(____)

02. Trunks. Each ~~boxer~~ combatant signed to engage in a contest must appear at scheduled ring time equipped with two (2) pairs of regulation trunks. One (1) pair must be white. The second pair may be a color of the boxer's own choice (other than white). These trunks may bear an emblem or insignia if it is not of a commercial or advertising nature. The articles of agreement must specify the colors of trunks to be worn by each ~~contestant~~ combatant. The ~~contestants~~ combatants may not wear the same colors in the ring without the approval of the Commission's ~~representative~~. (3-3-94)(____)

03. Fit. The trunks must be loose fitting and made of a lightweight cloth similar to an athlete's "running pants." The belt of the trunks must not extend above the waist line. (3-3-94)

04. Other Equipment. Each ~~boxer~~ combatant must wear: (3-3-94)(____)

a. A mouthpiece which has been individually fitted; and (3-3-94)(____)

b. An abdominal cup which will protect him against injury from a foul blow. (3-3-94)

702. ~~CONTESTANT~~ COMBATANT'S PHYSICAL APPEARANCE.

01. Appearance. Each ~~contestant~~ combatant must be clean and present a tidy appearance. (3-3-94)(____)

02. Grease or Foreign Substances. The excessive use of grease or any other foreign substance may not be used on the face of a ~~contestant~~ combatant. The referees or the Commission's ~~representative in charge~~ shall cause any excessive grease or foreign substance to be removed. (3-3-94)(____)

03. Hair. The Commission's ~~representative~~ shall determine whether head or facial hair presents any hazard to the safety of the ~~contestant~~ combatant or his opponent or will interfere with the supervision and conduct of the contest. (3-3-94)(____)

703. PROCEDURE FOR USE OF SCORECARDS.

01. Scorecards. The Commission's ~~representative in charge at a boxing bout~~ shall, before the start of the ~~bout~~ contest, give scorecards to each judge. (3-3-94)(____)

02. Scoring by Judges. The judges shall score each round of the bout contest on an individual scorecard and sign it. The referee shall pick up the scorecard from each judge and turn in the scorecards at the Commission's desk before the start of each round. (3-3-94)(____)

03. Presentation of Scorecards to Press After Bout Contest. The Commission's representative may show the scorecards to accredited representatives of the press after the completion of the bout contest. (3-3-94)(____)

04. Delivery of Scorecards to Commission. The Commission's representative shall mail or deliver the scorecards with the rest of his together with required reports regarding the bout contest to the office of the Commission Bureau. (3-3-94)(____)

05. Report of Each Bout Contest. Reports of each bout contest will be kept on file in the office of the Commission Bureau. (3-3-94)(____)

704. METHOD OF JUDGING.

01. Scoring by Judges. Each judge shall score every contest and determine the winner through the use of the following system: (3-3-94)

- a. The better boxer combatant of a round receives ten (10) points and his opponent proportionately less. (3-3-94)(____)
- b. If the round is even, each boxer combatant receives ten (10) points. (3-3-94)(____)
- c. No fraction of points may be given. (3-3-94)
- d. Points for each round must be awarded immediately after the end of the round. (3-3-94)

02. Majority Opinion. After the end of the contest the announcer shall pick up the scores of the judges from the Commission's desk. The majority opinion is conclusive and if there is no majority the decision is a draw. (3-3-94)

03. Announcing a Winner. When the representative of the Commission has checked the scores, he shall inform the announcer shall be informed of the decision, and the announcer shall inform the audience of the decision over the speaker available public address system. (3-3-94)(____)

705. INTRODUCTION FROM RING.

Only a boxer, wrestler combatant or person officially identified with boxing or wrestling may be introduced from the ring at an event, except with specific authority to do so from the representative of the Commission. (3-3-94)(____)

706. REFEREE'S INSTRUCTIONS TO ~~CONTESTANTS~~ COMBATANTS.

The referee shall, before starting a contest, ascertain from each contestant combatant the name of his chief second, and shall hold the chief who shall be responsible for the conduct of the assistant seconds during the progress of the contest. The referee shall call contestant combatants together before each bout contest for final instructions, at which time each contestant combatant must be accompanied by his chief second only. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

715. FOULS -- DISQUALIFICATION OF ~~BOXER~~ COMBATANT AND WITHHOLDING OF PURSE.

Any boxer combatant guilty of a foul in a boxing contest may be disqualified by the referee and his the participant's purse ordered withheld by a the Commissioner or the Commissioner's representative. Disposition of the purse and the penalty to be imposed upon the boxer combatant will be determined by the Commission. (3-3-94)(____)

716. ACCIDENTAL FOULING.

01. ~~**Bout Stopped Because of Accidental Foul.**~~ If a bout contest is stopped because of an accidental foul, the referee shall determine whether the boxer combatant who has been fouled can continue or not. If the boxer combatant's chance of winning has not been seriously jeopardized as a result of a foul, the referee may order the bout contest continued after a reasonable interval. Before the bout contest begins again, the referee shall inform the Commission of his determination that the foul was accidental. (3-3-94)()

02. **Bout Contest Stopped Due to Accidental Foul.** If the referee determines that the bout contest may not continue because of an injury suffered as the result of an accidental foul, the bout must be declared a draw if the foul occurs during ~~the first three (3) rounds~~ one-half (1/2) of the total scheduled rounds. (3-3-94)()

03. **Contestant Combatant Unable to Finish Bout.** If an accidental foul renders a contestant combatant unable to continue the bout after the third round, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the bout contest. (3-3-94)()

04. **Bout Contest Stopped by Referee.** If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout contest stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the bout contest. (3-3-94)()

(BREAK IN CONTINUITY OF SECTIONS)

722. **KNOCKDOWN OF ~~CONTESTANT~~ COMBATANT; PROCEDURE FOR COUNTING.**

01. **Knockdown.** When a contestant combatant is knocked down, the referee shall order the opponent to retire to the farthest neutral corner of the ring, pointing to the corner, and immediately begin the count over the boxer combatant who is down. The referee shall audibly announce the passing of the seconds, accompanying the count with motions of his arm, the downward motion indication the end of each second. (3-3-94)()

02. **Timekeeper.** The timekeeper, by effective signaling, shall give the referee the correct one (1) second interval for his count. The referee's count is the official count. Once the referee picks up the count from the timekeeper, the timekeeper shall cease counting. No contestant combatant who is knocked down may be allowed to resume boxing until the referee has finished counting to eight (8). The contestant combatant may take the count either on the floor or standing. (3-3-94)()

03. **Failure of Opponent to Stay in Farthest Neutral Corner.** If the opponent fails to stay in the farthest neutral corner, the referee shall cease counting until he has returned to his corner and shall then go on with the count from the point at which it was interrupted. If the boxer combatant who is down arises during the count, the referee may step between the contestant combatants long enough to assure himself that the boxer combatant just arisen is in condition to continue. If so assured, he shall, without loss of time, order both boxer combatants to go on with the contest. During the intervention by the referee the striking of a blow by either boxer combatant may be ruled a foul. (3-3-94)()

04. **Knock-Out.** When a boxer combatant is knocked out, the referee shall perform a full ten (10) second count unless, in the judgment of the referee, the safety for the contestant combatant would be jeopardized by such a count. If the contestant combatant who is knocked down is still down when the referee calls the count of ten (10), the referee shall wave both arms to indicate that he had been knocked out and shall raise the hand of the opponent as the winner. (3-3-94)()

05. **Both ~~Boxers~~ Combatants Down.** If both boxer combatants go down at the same time, the count shall be continued as long as one (1) is still down. If both boxer combatants remain down until the count of ten (10), the contest must be stopped and the decision is a technical draw. (3-3-94)()

06. **Boxer Combatants Down -- Referee Counting.** If a boxer combatant is down and the referee is in the course of counting at the end of: (3-3-94)()

a. A round other than the final round, the bell indicating the end of the round must not be sounded, but the bell must be sounded as soon as the downed ~~boxer~~ combatant regains his feet. (3-3-94)(____)

b. The final round, the bell must be sounded indicating the end of the round and contest. (3-3-94)

07. Boxer Combatant Down -- Round Terminates. When a ~~contestant~~ combatant has been knocked down before the normal termination of a round and the round terminates before he has arisen from the floor of the ring: (3-3-94)(____)

a. If the round is other than the final round, the referee's count must be continued. If the ~~contestant~~ combatant who is down fails to arise before the count of ten (10), he is considered to have lost the ~~bout~~ contest by a knockout in the round that was just concluded. (3-3-94)(____)

b. If the round is the final round, the referee's count must be continued upon the sound of the bell terminating the round. (3-3-94)

08. Knockdown After Bell Has Sounded. If a legal blow struck in the final seconds of a round causes a ~~fighter~~ combatant to go down after the bell has sounded, that knockdown must be regarded as having occurred during the round just ended and the appropriate count must continue into the rest period following the bell. (3-3-94)(____)

09. Three Knockdowns in Same Round. Any ~~boxer~~ combatant who is knocked down three (3) times in the same round automatically loses the contest by technical knockout. The Commission may, by prior directive, waive the provisions of this subsection. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

725. PROCEDURE WHEN ~~BOXER~~ COMBATANT IS KNOCKED OUT; PERIOD BEFORE HIS NEXT BOU CONTEST; EXAMINATION IN CASE OF HEAD INJURY.

01. Boxer Combatant Who Has Been Knocked Out. A ~~boxer~~ combatant who has been knocked out must be kept in a prone position until he has recovered. Except for the referee or chief second who may remove his mouthpiece, no one may touch him until the ring physician enters the ring, attends him and issues any instructions to his handlers. (3-3-94)(____)

02. Decision of Technical Knockout Rendered by Referee. If the referee has rendered a decision of technical knockout against a ~~boxer~~ combatant, the participant must be placed on the ill and unavailable list for a period designated by the Commission's ~~representative~~ after consultation with the Commission's physician, but that period must not be less than fifteen (15) days. The ~~boxer~~ combatant may not engage in any contact boxing during this period without the approval of the Commission. (3-3-94)(____)

03. Knockout from Blow to Head. If a ~~boxer~~ combatant has been knocked out by a blow to the head, he must be placed on the ill and unavailable list for at least thirty (30) days. Before he is reinstated, he must satisfactorily pass an examination performed with a computerized tomographic scanning device or an electroencephalogram, or both, if the Commission or its physician finds that such an examination is necessary to determine his condition. (3-3-94)(____)

04. Head Injury. Whenever it appears that a ~~boxer~~ combatant may have suffered a head injury, he must undergo such an examination if directed to do so by the Commission or its physician. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~731. AMATEUR BOXING.~~

~~01. **Recognition of Amateur Bout.** The Commission will recognize an amateur bout only if it is registered and sanctioned by the United States Amateur Boxing, Inc. (USA Boxing, Inc.) as a boxing contest.~~

~~(3-3-94)~~

~~02. **Rules Governing Amateur Boxing.** An amateur boxing contest is governed by the rules of the USA Boxing, Inc. for the conduct of such a contest.~~

~~(3-3-94)~~

~~03. **Registration of Amateurs.** An amateur may not take part in a boxing contest unless he is registered with the USA Boxing, Inc.~~

~~(3-3-94)~~

7321. MARTIAL ARTS.

01. Martial Arts Regulated as Boxing. Martial arts exhibitions and contests involving combative contact between contestants or between participants, such as body-to-body blows, holds, kicks, or throws, and full-contact martial arts exhibitions and contests, are subject to and must comply with all provisions of Title 54, Chapter 4, Idaho Code, relating to boxing, and all Commission rules relating to boxing, except to the extent specifically exempted by statute or rule. (4-6-05)

02. Practices, Belt Promotions, and Non-Contact Demonstrations. Martial arts practices, belt promotion testing and demonstrations (as used herein the term demonstrations means exhibitions that do not involve combative contact between contestants or between participants) conducted by martial arts schools are not considered to be boxing and are exempt from the licensing requirements of Title 54, Chapter 4, Idaho Code. (4-6-05)

03. Licensing Exemption. Martial arts schools that meet the conditions set forth within Section 54-406(2)(b), Idaho Code, may apply to the Commission for exemption from licensing and sanctioning permit requirements relating to exhibitions and contests. (4-6-05)

04. Use of Official Rules for Art. Martial arts contests and exhibitions must be conducted pursuant to the official rules of the particular art. The sponsoring organization or promoter must file a copy of the official rules with the Commission before the Commission will issue a sanctioning permit for the contest or exhibition. (4-6-05)

05. Boxing Gloves. The requirement set forth in Section 54-414, Idaho Code, of wearing boxing gloves applies to kickboxing but shall not apply to any other form of martial art unless the use of boxing gloves is required by the official rules of that particular art. Any gloves utilized shall be in good condition as approved by the commission. For the main and semi main events gloves shall be in new condition and of the same brand for combatants. (4-6-05)()

06. Other Requirements and Limitations. Except to the extent set forth in Rule 732, all requirements and the limitations relating to boxing (as set forth within Title 54, Chapter 4, Idaho Code, and in the remaining rules of the Commission) shall apply to all martial arts contests and exhibitions. Notwithstanding the foregoing, at its sole discretion, the Commission may (by specific reference in the sanctioning permit) allow the use of other requirements and limitations during a particular martial arts contest or exhibition. (4-6-05)

7332. -- 799. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

802. LICENSEE'S DUTIES AT WRESTLING EXHIBITION.

01. Conduct. The referee, promoter and his agents, attaches and employees, and participants in any wrestling exhibition shall maintain peace, order and decency in the conduct of the exhibition. (3-3-94)

02. No Abusive Behavior. A person who is involved in such exhibition shall not abuse the referee or an official of the Commission. (3-3-94)

03. Decision and Appeal. The Commission's ~~executive director~~ shall hear any complaint about a referee or an official. ~~The executive director's decision on such a complaint may be appealed to the Commission.~~
(3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~804. WRESTLING, BOOKING AGENTS, LICENSING, RESPONSIBILITIES.~~

~~01. Licensing.~~ The Commission may issue a person a license as a booking agent if: (3-3-94)

~~a. The person completes the application;~~ (3-3-94)

~~b. The Commission determines the person is qualified; and~~ (3-3-94)

~~c. The person pays the fee for the license.~~ (3-3-94)

~~02. Booking Agent Responsibilities.~~ A booking agent who is licensed by the Commission may arrange for exhibitions by wrestlers and otherwise assist wrestler in obtaining work. Any promoter desiring to book the wrestlers directly may do so, however, he must work through a booking agent who is licensed by the Commission. The booking agent is responsible to the Commission for the filing of all contracts and notices required by law. (3-3-94)

~~03. Booking Offices.~~ A wrestler shall specify which booking offices are authorized to book an exhibition for him. This authority may be terminated upon ten (10) days notice to the Commission or as specified in the written agreement between the wrestler and the booking agent filed with and approved by the Commission. (3-3-94)

~~8054. -- 899. (RESERVED).~~

900. ADMINISTRATION OR USE OF ALCOHOL, DRUGS, STIMULANTS.

01. Prohibitions. The administration of or use of any of the following, in any part of the body either before or during an match event, to or by any boxer combatant is prohibited: (3-3-94)(____)

a. Alcohol; (3-3-94)

b. Drugs; (3-3-94)

c. Injection; or (3-3-94)

d. Stimulant. (3-3-94)

02. Urinalysis. A boxer combatant shall submit to a urinalysis of chemical test before or after a contest if the Commission directs him to do so. (3-3-94)(____)

03. Suspension. No boxer combatant will be allowed to box if his urinalysis testing reveals the presence of illegal substance(s). (3-3-94)(____)

04. Procedure for Testing for Illegal Substance(s). (3-3-94)

a. The Commission reserves the right to conduct random drug testing. A boxer combatant with a recent history of drug abuse may be specifically required to test. Both boxer combatants in the title bout contest will shall be tested by urine specimen or blood test at the discretion of the commission. (3-3-94)(____)

b. The boxer(s) combatant to be tested shall go directly to his the dressing room after the end of the fight. Only water may be consumed until the test sample has been taken. The Commission's medical representative

~~approved physician or agent~~ will give ~~the boxer each combatant~~ the ~~sample specimen~~ container and observe the ~~boxer combatant~~ give the specimen into the container. The container shall be sealed and labeled by the ~~medical representative physician or agent~~. The Chain of Custody Form shall be signed by the ~~boxer combatant~~, or ~~his~~ manager, and the ~~medical representative physician or agent~~ shall ~~also~~ sign and date ~~also the form~~. The ~~medical representative physician or agent~~ shall transport the sample to the testing laboratory as selected by the Commission. Any other person taking custody of the sample shall sign and date The Chain of Custody Form. After completion of the test, the Chain of Custody Form shall be returned to the Commission with the test results. (3-3-94)(____)

05. Subject to Disciplinary Action. A licensee who violates any provision of this Section is subject to disciplinary action by the Commission. (3-3-94)

(BREAK IN CONTINUITY OF SECTIONS)

902. ~~BOXER~~ COMBATANT NOT TO HAVE PROMOTER OR CERTAIN OTHERS ACT AS MANAGER ~~OR~~ HOLD FINANCIAL INTEREST.

A ~~boxer combatant~~ may not have a promoter or any of its members, stockholders, officials, matchmakers or assistant matchmakers: (3-3-94)(____)

01. Manager. Act directly ~~of~~ or indirectly as ~~his~~ manager; or (3-3-94)(____)

02. Financial Interest. Hold any financial interest in ~~his~~ ~~the~~ management ~~or~~ of ~~his~~ ~~the~~ combatant's earnings ~~from boxing~~. (3-3-94)(____)

903. REPORT TO COMMISSION OF SOLICITATION TO CONDUCT CONTEST FRAUDULENTLY.

When ~~any~~ person who is licensed by the Commission is approached with a request ~~of~~ or suggestion that a contest not be conducted honestly, that person must immediately report that matter to the Commission. Failure to do so is a ground for disciplinary action. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

905. GROUNDS FOR DISCIPLINARY ACTION.

Any person who is licensed by the Commission may have his license suspended or revoked, ~~of he may~~ or be fined or ~~be subject to~~ ~~otherwise~~ disciplined by the Commission ~~if he has~~ for any of the following: (3-3-94)(____)

01. Violation of Laws. ~~Having~~ ~~violated~~ the laws of Idaho, except for minor traffic violations. (3-3-94)(____)

02. Violation of Rules. ~~Having~~ ~~violated~~ any provisions of this chapter. (3-3-94)(____)

03. Valid Orders of Commission. Failed ~~of~~ or refused to comply with a valid order of the Commission. (3-3-94)(____)

04. Good Conduct. Conducted ~~himself~~ at any time or place in a manner which is deemed by the Commission to reflect discredit to boxing or wrestling. (3-3-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

908. SUSPENSION AND REVOCATION OF LICENSES.

01. Comply with Suspensions. Every promoter and matchmaker shall take notice of the bulletins of suspension sent out by the Commission and shall not permit any person under suspension to take any part as a participant or in arranging or conducting matches or exhibitions during the period of suspension. (3-3-94)

02. Additional. Every person whose license has been suspended or revoked by the Commission shall refrain from participating in or matchmaking or holding ~~bouts~~ contests during the period of suspension or after the revocation.

(3-3-94)

03. Specific Actions. Any person whose license has been suspended or revoked is barred from:

(3-3-94)

a. The dressing rooms at the premises where any program of boxing is being held; (3-3-94)

b. Occupying any seat within six (6) rows of the ring platform; (3-3-94)

c. Approaching within six (6) rows of seats from the ring platform; and (3-3-94)

d. Communicating in the arena or near the dressing rooms with any of the principals in the ~~bouts~~ contests, their managers, their seconds, of the referee, whether directly or by a messenger, during any ~~boxing~~ program. (3-3-94)()

e. Any person who violates a provision of ~~this~~ Subsection 908.03 of this rule may be ejected from the arena or building where the program is being held, and the price paid for ~~his ticket~~ admission refunded ~~to him~~ upon ~~his~~ presentation of the ticket stub at the box office. Thereafter, he is barred entirely from all premises used for contests or exhibitions while the programs are being held. (3-3-94)()

04. Dishonest Methods. If a license issued by the Commission has been suspended because the holder used dishonest methods to affect the outcome of any contest or because of ~~any~~ conduct reflecting serious discredit upon the sport of boxing, the Commission will not reinstate the license for six (6) months in the case of first offense. In the case of a second offense, the holder's license will be revoked. (3-3-94)()

05. Temporary Suspension. Any manager who is under temporary suspension is considered to have forfeited all rights in this state under the terms of any contract with a ~~boxer or wrestler~~ combatant licensed by the Commission. Any attempt by a suspended manager to exercise those contract rights will result in a permanent suspension of his license. The license of any ~~boxer~~ combatant, matchmaker, or promoter ~~or wrestler~~ who continues to engage in any contractual relations with a manager whose license has been suspended by the Commission may be indefinitely suspended. (3-3-94)()

06. Continuation. A ~~boxer~~ combatant whose manager has been suspended may continue ~~boxing to~~ compete independently during the term of that suspension, signing ~~his own~~ contracts for matches. Payment of a ~~boxer~~ combatant's earnings may not be made by any promoter to a manager who is under suspension, or to ~~his~~ a suspended manager's agent, but ~~the purse must~~ shall be paid in full to the ~~boxer~~ combatant. (3-3-94)()

07. Cancellation of Contract Rights. Revocation of a manager's license automatically cancels all ~~his~~ contract rights in this state under any contracts with ~~boxers~~ combatants made under the authority of the Commission. If such a revocation occurs, a ~~boxer~~ combatant may operate independently and make ~~his own~~ contracts ~~with other~~ for matches or ~~he may~~ enter into contracts with other managers licensed by the Commission. (3-3-94)()

909. PENALTIES FOR CERTAIN VIOLATIONS; REVIEW BY COMMISSION.

01. Penalties General. Except as otherwise provided in this chapter, ~~a Commissioner or~~ the Commission's ~~representative~~ may charge a penalty not to exceed twenty-five thousand dollars (\$25,000) from a schedule of penalties approved by the Commission for: (3-3-94)()

a. Any violation of the provisions of the Rules of the Athletic Commission; or (3-3-94)

b. Being late or failing to appear for a weigh-in or contest. (3-3-94)()

02. Later Review. Any disciplinary action taken pursuant to (previous citation Subsection 909.01) will be reviewed at a later date by the Commission. (3-3-94)

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01 - RULES FOR CONTRACT PROVIDERS

DOCKET NO. 05-0101-0701

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) 20-504(9), 20-504(11), 20-531(4), 20-545(1), Idaho Code, and Prison Rape Elimination Act of 2003 (Public Act 108-79).

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 17, 2007.

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

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

The proposed rule changes are needed to take care of housekeeping changes (use correct references to “juvenile” and “juvenile offender”), clarify sections that are confusing or ambiguous, such as incident reporting, reports, recordkeeping, training, room restrictions, and use of force and, finally, to add Prison Rape Elimination Act compliance sections.

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 we shared the proposed changes with the contract providers and staff and allowed a limited period for comment while recognizing they will have another opportunity to comment from October 3 through October 24, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Bishop, Deputy Attorney General, at 334-5100, extension 384.

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 24, 2007.

DATED this 23rd day of August, 2007.

Nancy Bishop
Deputy Attorney General
Idaho Department of Juvenile Corrections
400 N. 10th Street, 2nd Floor
P.O. Box 83720, Boise, ID 83720-0285
Phone: 334-5100, ext. 384; Fax: 334-5120

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0101-0701

000. LEGAL AUTHORITY.

~~**01. Section 20-504(2), Idaho Code.** Pursuant to Section 20-504(2), Idaho Code, the Idaho Department of Juvenile Corrections shall establish minimum standards for detention, care and certification of approved detention facilities based upon such standards. (4-6-05)~~

021. Section 20-504(9), Idaho Code. Pursuant to Section 20-504(9), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. (4-6-05)

032. Section 20-504(11), Idaho Code. Pursuant to Section 20-504(11), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. (4-6-05)

~~**04. Section 20-504(14), Idaho Code.** Pursuant to Section 20-504(14), Idaho Code, the department, in cooperation with the courts and the counties, shall establish uniform standards for county juvenile probation services, as well as qualifications and standards for the training of juvenile probation officers. (4-6-05)~~

~~**05. Section 20-531(4), Idaho Code.** Pursuant to Section 20-531(4), Idaho Code, the department shall adopt standards, policies and procedures for the regulation and operation of secure facilities. (4-6-05)~~

063. Section 20-545(1), Idaho Code. Pursuant to Section 20-545(1), Idaho Code, the department shall have the power to adopt rules for the state juvenile corrections center as may be required by the Juvenile Corrections Act. (4-6-05)

074. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in this chapter: (4-6-05)

01. Adult. A person eighteen (18) years of age or older. (4-6-05)

02. Assessment. The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the service plan. (4-6-05)

03. Clinical Services Administrator. Administrative person who has oversight of the department's clinical services division. Supervises the regional clinical supervisors and works with the regional superintendents in the maintenance and development of treatment programs. (4-6-05)

04. Clinical Supervisor. Person who supervises juvenile services coordinators and clinicians in assigned regions. This person is responsible for recommending releases from department custody and approving transfers in collaboration with the clinical services administrator, and regional superintendent. This responsibility also includes oversight of the regional observation and assessment process, and assists in the maintenance and development of treatment programs. (4-6-05)

05. Commit. Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (4-6-05)

- 06. Community Treatment Team.** A team including the juvenile services coordinator, contract provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. (4-6-05)(____)
- 07. Contraband.** Any item not issued or authorized by the contract provider. (4-6-05)
- 08. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. (4-6-05)
- 09. Contract Provider.** A residential or nonresidential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. (4-6-05)(____)
- 10. Court.** Means district court or magistrate's division thereof. (4-6-05)
- 11. Criminogenic Needs.** Assessed juvenile offender risk factors or attributes of juvenile offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism. (____)
- ~~12.~~ **Department.** The Idaho Department of Juvenile Corrections. (4-6-05)
- ~~13.~~ **Detention.** Detention means the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. (4-6-05)
- ~~14.~~ **Director.** The director of the Idaho Department of Juvenile Corrections. (4-6-05)
- 15. Education Plan.** A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Achievement Standards and recommended coursework for their grade level and based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. (____)
- 146. Facility.** The physical plant associated with the operation of residential or nonresidential programs. (4-6-05)
- 157. Facility Treatment Team.** The group of staff employed by the department or by the contract provider who have input into developing the juvenile offender's service implementation plan; who provide direct services to juvenile offenders; and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement the service implementation plan. (4-6-05)(____)
- 18. General Education Student.** A student who does not qualify for special education services under the IDEA. (____)
- ~~169.~~ **Health Assessment.** The purpose of a health assessment is to thoroughly review and determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-6-05)(____)
- ~~170.~~ **Health Screening.** The purpose of a health screening is to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. (4-6-05)(____)
- ~~181.~~ **Health Services.** Health services are defined as including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-6-05)
- ~~192.~~ **Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the

program and which requires a staff response.

~~(4-6-05)~~()

23. Individual Community Pass. An individual community pass includes any instance in which a juvenile offender leaves the contract provider's facility for a planned activity, without direct supervision by at least one (1) contract provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

a. Day passes alone or with family or other, approved individuals; ()

b. Day or overnight home visits; ()

c. Recreational activities not otherwise approved as a part of a group activity; and ()

d. Funeral leave. ()

24. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

205. Interns. A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. ~~(4-6-05)~~()

246. Judge. A district judge or a magistrate. (4-6-05)

227. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (4-6-05)

238. Juvenile Offender. A person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult. (4-6-05)

249. Juvenile Records. Information concerning the individual's juvenile offender's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, detainer, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. ~~(4-6-05)~~()

2530. Juvenile Services Coordinator. An individual employed by the department who is responsible for the monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. This responsibility includes monitoring service plans and progress reports and sharing information with family, community, courts, and with other department employees. ~~(4-6-05)~~()

2631. Legal Custody. The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. ~~(4-6-05)~~()

2732. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-6-05)

2833. Mechanical Restraints. Any method of physical control of a juvenile offender which involves the

use of devices to restrict physical activity. (4-6-05)(____)

2934. Mental Health Assessment. The purpose of a mental health assessment is to thoroughly review and determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-6-05)(____)

305. Mental Health Screening. The purpose of mental health screening is to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. (4-6-05)(____)

346. Nonresidential Programs. Programs providing services to juveniles in the custody of the department and their families in which the juvenile offender continues to live with a parent or guardian and not in a residential care facility. (4-6-05)(____)

327. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. (4-6-05)

338. Physical Restraint. Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control his actions. (4-6-05)(____)

349. Quality Assurance. Department employees responsible for overseeing contract providers' compliance with contract terms and these rules. (4-6-05)

3540. Region. Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. (4-6-05)

3641. Regional Facility. Department operated juvenile correctional centers located in each region of the state. (4-6-05)

3742. Reintegration Plan. That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. (4-6-05)(____)

3843. Release from Department Custody. Refers to the termination of the department's legal custody of a juvenile. (4-6-05)

3944. Restitution. Financial payment or service work intended to reimburse victims for the cost of damage or harm caused by a juvenile offender. Restitution may be court ordered or may be imposed following a formal disciplinary process within a contract provider program. (4-6-05)(____)

405. Restricted Clinical Information. Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, and psychological testing, or other legally confidential information. (4-6-05)

446. Room Confinement. Instances in which a juvenile offender is confined in the room in which he usually sleeps, rather than being confined in an isolation room. (4-6-05)(____)

427. Separation or Isolation. Any instance when a juvenile offender is confined alone for over fifteen (15) minutes in a room other than the room in which he usually sleeps. (4-6-05)(____)

438. Service Implementation Plan. A written document produced and regularly updated by a regional facility or contract provider with input from the community treatment team within thirty (30) days of arrival at regional facility or contract provider. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. (4-6-05)(____)

449. Service Plan. A written document produced during the observation and assessment period

following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. (4-6-05)(____)

50. Sexual Misconduct. Sexual misconduct includes all types of assault, violence, intimidation, and harassment of a sexual nature directed toward juvenile offenders by staff or by other juvenile offenders. (____)

451. Staffing. Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. (4-6-05)(____)

4652. Strip Search. An examination of the juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of all the juvenile offender's clothing while such is not being worn. (4-6-05)(____)

4753. Suicide Risk Assessment. An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. (4-6-05)(____)

4854. Suicide Risk Screening. An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. (4-6-05)(____)

4955. Transfer. Any movement of a juvenile offender in the custody of the department from one (1) facility to another, including a regional facility, without a release from department custody. (4-6-05)(____)

506. Treatment. Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. (4-6-05)(____)

517. Variation. The means of complying with the intent and purpose of a child care licensing rule in a manner other than that specifically prescribed in the rule. (4-6-05)

528. Vocational Services. Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. (4-6-05)

539. Volunteer. A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. (4-6-05)(____)

5460. Waiver. The nonapplication of one (1) or more of these rules based upon a request by the provider and a written decision issued by the department. (4-6-05)

5561. Work Program. A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juveniles' delinquent behavior. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

200. AUTHORITY TO INSPECT.

01. Inspections. The department shall have the authority to conduct reviews of programs, program operations, and facilities to ensure the contract provider's compliance with these rules. The contract provider shall

cooperate with the department's review, and must provide access to the facility and all juvenile records for juveniles in department custody, as deemed necessary by the department. The department may *not* access individual juvenile records *for* of juveniles who have received services funded by the department but are not in the custody of the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. (4-6-05)(____)

02. ~~Written~~ Quarterly Reports. In order to assist the department in monitoring contract programs for key areas of operational performance, each contract provider will be required to submit a written, quarterly report to the department's quality assurance staff. These reports may be submitted by facsimile, mail, or electronically within thirty (30) calendar days of the end of each quarter. The reports shall include, at a minimum, the following information: (4-6-05)(____)

- a. Changes made in the population served; (____)
- b. Changes in program design or functioning; (____)
- c. Changes in program curriculum; (____)
- d. Changes in ~~and table of~~ organizational chart, including specific management and administrative staff who may have left the program; (4-6-05)(____)
- ~~b.e.~~ All Staff turnover during the quarter; (4-6-05)(____)
- f. Copies of all incident reports; (____)
- eg. Number of reportable incidents of the type listed below: (4-6-05)
 - i. Assaults against juvenile offenders; (4-6-05)(____)
 - ii. Assaults against staff; (4-6-05)
 - iii. Behavioral and psychiatric emergencies; (4-6-05)
 - iv. Contraband; (4-6-05)
 - v. Escapes; (4-6-05)
 - vi. Injuries or illness requiring significant medical attention; (4-6-05)(____)
 - vii. Restraints; (4-6-05)
 - viii. Separation or isolation; (4-6-05)
 - ix. ~~Sexually acting out~~ misconduct; and (4-6-05)(____)
 - x. Suicide precautions. (4-6-05)
- ~~eh.~~ Number of hours and topics included in staff training for the quarter; (4-6-05)
- ei. Personal funds, earned income, and restitution for each juvenile in department custody according to Subsection 212.02 of these rules; (4-6-05)(____)
- rules; and ~~fj.~~ A copy of juvenile offender grievances and resolutions according to Subsection 246.02 of these (4-6-05)(____)
- ~~gk.~~ Number of department referrals made and accepted; and (4-6-05)(____)

L. Number of department referrals made and rejected. ()

03. Additional Reporting Requirements. In situations where the department has determined that the safety, security, or order of a program are at risk, more frequent and more detailed reporting will be required by the director, or designee. The department has a responsibility at all times to monitor the overall safety, security, and order of a facility or program for the protection and well-being of the juvenile offenders. For these reasons, the contract provider shall report to the department any and all incidents of the type listed in Section 200 of these rules, that occur in their program or facility regardless of whether or not the juveniles involved are in the department's custody. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

205. TRANSPORTATION.

01. Transportation for Service Plan. It shall be the responsibility of the contract provider to provide all transportation associated with the juvenile offender's service implementation plan. The family may be relied upon to provide transportation for passes and some other community contacts as long as this does not present any undue risk or burden to the juvenile offender, family, or to the community. (4-6-05)()

02. Transportation and Notification for Court Proceedings. It is the responsibility of the department to assure the juvenile offender's appearance in all court proceedings and to arrange transportation as indicated. It is the contract provider's responsibility to immediately notify the juvenile offender's juvenile services coordinator of court dates and appearances. Contract providers may provide transportation under this section in consultation with the juvenile services coordinator. (4-6-05)()

03. Arrangements. Arrangements for transportation related to court appearances as well as related to transfer or release of juveniles from department custody shall be made between the contract provider and the department's regional transport coordinator located in the contract provider's region. This communication is facilitated through the juvenile services coordinator. (4-6-05)

04. Gender Specific Transportation. In all transport situations there must be at least one (1) assigned staff of the same gender as the juvenile offender being transported. (4-6-05)()

05. Transport in Personal Vehicles. Juveniles in the custody of the Idaho Department of Juvenile Corrections shall not be transported in personal vehicles unless an emergency situation exists and is substantiated by documentation. (4-6-05)

206. JUVENILE RECORDS.

01. Case Management Documents. The contract provider shall maintain individual files on all juvenile offenders which shall include: (4-6-05)()

- a.** Observation and assessment report provided by the department; (4-6-05)
- b.** A copy of the signed Referral Acceptance/Denial Form; (4-6-05)
- c.** Additional assessments, which must be kept separate; (4-6-05)
- d.** Service implementation plans as referred to in Subsection 271.01 of these rules; (4-6-05)
- e.** Progress reports as referred to in Subsections 271.07 and 271.08 of these rules; (4-6-05)
- f.** Progress Assessment/Reclassification documents; ()

- fg.** Incident reports as referred to in Subsections 262.02 and 262.03 of these rules; (4-6-05)
- gh.** Court documents and dispositions; (4-6-05)
- hi.** Professional correspondence; (4-6-05)
- ij.** Clinical notes, which must be kept separate; (4-6-05)
- jk.** Medical records, which must be kept separate; (4-6-05)
- kl.** Educational records and school history, which must be kept separate; (4-6-05)
- lm.** Identifying information and physical descriptions; (4-6-05)
- mn.** Last known parent or guardian address and telephone number; (4-6-05)
- no.** Date of admittance and projected release from department custody; (4-6-05)
- op.** A copy of the written reintegration plan; and (4-6-05)
- pq.** Records of juvenile offenders' earnings and restitution payments. (~~4-6-05~~)(____)
- 02. Confidentiality.** (4-6-05)
- a.** Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for confidentiality, under certain conditions, of records that contain information about juvenile offenders. (~~4-6-05~~)(____)
- b.** All matters relating to confidentiality of juvenile offender files shall also comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Chapter 1, Sub-Chapter A, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." (~~4-6-05~~)(____)
- c.** Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. These file folders must be stamped "confidential" on the cover or outside folder. (4-6-05)
- d.** For contract providers that serve sex offenders, individual treatment assignments, such as journals, detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. (~~4-6-05~~)(____)
- 03. Automated Records.** Automated records shall include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records. The procedure shall also include provisions for backing up automated records. (4-6-05)
- 04. Policies and Procedures.** The contract provider shall have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA's privacy regulations, written procedures shall designate a privacy officer who will: (~~4-6-05~~)(____)
- a.** Supervise the maintenance of identifiable personal health care information; (4-6-05)
- b.** Serve as custodian of all confidential juvenile offender records; and (~~4-6-05~~)(____)
- c.** Determine to whom records may be released. (4-6-05)
- 05. Restrictions to Records Access.** (4-6-05)
- a.** Access to personal health information shall be limited to: (4-6-05)

i. Employees of the department and contract providers to the extent necessary to perform normal business functions, including health treatment, and other functions designed to maintain the good order, safety and security of the juvenile offenders or facility; (4-6-05)(____)

ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the department, the contract provider, probation officer, medical or mental health professionals and other appropriate individuals; (4-6-05)(____)

iii. Law enforcement members, emergency medical personnel, the Idaho Department of Health and Welfare and similar court or government officials, as necessary to perform their duties, and only if not otherwise prohibited by state or federal law or rule. (4-6-05)

b. Access to all other confidential juvenile offender records shall be limited to the following authorized persons: (4-6-05)(____)

i. Staff authorized by the contract provider and members of the administrative staff of the contract provider's parent agency; (4-6-05)

ii. A parent or guardian or the juvenile offender, to the extent that disclosure is not privileged and is clinically appropriate; (4-6-05)(____)

iii. Appropriate staff of the department; (4-6-05)

iv. Counsel for the juvenile offender with signed consent form; (4-6-05)(____)

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for official business; (4-6-05)

vi. Individuals and agencies approved by the department to conduct research and evaluation or statistical studies; or (4-6-05)

vii. Schools, as appropriate. (4-6-05)

06. Withholding of Information. If the department or the contract provider believes that information contained in the record would be damaging to the juvenile offender's treatment or rehabilitation, that information may be withheld from the juvenile offender, or his parent, or guardian, or others, except under court order. (4-6-05)(____)

07. Retention of Juvenile Records. Educational, medical, and drug and alcohol records must be permanently retained. Contract providers shall have a written policy on the retention and disposal of records. At the time of transfer or release from department custody, all case management records must be forwarded to the juvenile offender's juvenile services coordinator. (4-6-05)(____)

08. Requests for Information. Requests for information of any kind about juvenile offenders in department custody, following their release or transfer from a contract provider's program must be directed to the juvenile correctional center in Nampa. (4-6-05)(____)

207. RELEASE FORMS.

01. Release of Nonmedical Information. The juvenile offender, parent or guardian, and department representative shall sign a release of information and consent form before information about the juvenile offender is released to any non-juvenile justice entity. A copy of the consent form shall be maintained in the juvenile offender's file at the program and in the case management file maintained by the department. (4-6-05)(____)

02. Release of Medical Information. Release of medical information requires more specific authorization according to Section 320, of these rules. (4-6-05)

03. Minimum Information. The release of information and consent form shall, at a minimum, include the following: (4-6-05)

- a. Name of person, agency or organization requesting information; (4-6-05)
- b. Name of person, agency or organization releasing information; (4-6-05)
- c. The specific information to be disclosed; (4-6-05)
- d. The date consent form is signed; (4-6-05)
- e. Signature of the juvenile offender and the parent or guardian; (~~4-6-05~~)()
- f. The signature of the person witnessing the juvenile offender's signature; and (~~4-6-05~~)()
- g. Effective and expiration dates. (4-6-05)

04. Document Reproduction. The contract provider agrees that no documents provided by the department shall be reproduced or distributed without the written permission of the department. (4-6-05)

208. JUVENILE OFFENDER PHOTOGRAPHS.

01. Limitations. No juvenile offender in the custody of the department shall be used in person or by photograph or any other visual image for the express purpose of any fund raising efforts. (~~4-6-05~~)()

02. Department Authorization. Permission to release or use the photographs and any other visual image of juvenile offenders in the custody of the department shall require written authorization from the department director or designee. (~~4-6-05~~)()

209. CONTRACT PROVIDER ADMINISTRATIVE RECORDS.

01. Documentation Retention. The contract provider shall document and retain documentation of all information related to the following items: (4-6-05)

- a. Program consultation provided at the facility, such as technical assistance on program design and implementation; (4-6-05)
- b. Training provided to staff; (4-6-05)
- c. All alleged instances of child abuse; (4-6-05)
- d. Fiscal and program audits or reviews, including corrective actions required and taken; (4-6-05)
- e. Reports of sexual abuse disclosures to Idaho Department of Health and Welfare or law enforcement; ~~and~~; (~~4-6-05~~)()
- f. Juvenile offender ~~or~~ and staff grievances; and (~~4-6-05~~)()
- g. Copies of all completed incident reports. ()

02. Employee Files. Employee personnel files shall contain the following: ()

- a. ~~Minimum~~ Minimum qualifications for the job held; ()
- b. ~~Hiring~~ Hiring information; ()

- c. Copies of all required licenses or certificates related to the job function: ()
- d. Copies of academic credentials, driving record and criminal background checks, as required by state law: ()
- e. Current training records; and ()
- f. Annual performance evaluations and copies of personnel actions, such as disciplinary action taken and acknowledgements of outstanding performance. (4-6-05)()

210. CLOTHING AND PERSONAL ITEMS.

01. Sufficient Clothing. Juvenile offenders shall have sufficient clothing of the proper weight to participate in activities included in their service implementation plan. Juvenile offenders may arrive at the facility with their own clothing and personal items, which shall be inventoried. If the juvenile offender does not have sufficient clothing, or appropriate clothing, the contract provider shall provide or purchase adequate and appropriate clothing for the juvenile offender. Contract providers shall not request nor require that the parent or guardian pay for or purchase clothing. (4-6-05)()

02. Release from Facility. All clothing and incidentals become the property of the juvenile offender upon release from the facility. The contract provider will ensure the proper care and cleaning of clothing in the juvenile offender's possession. (4-6-05)()

03. Replacement Clothing. Clothing provided or purchased as replacement will be at the expense of the contract provider. Unique items of clothing not required for program participation may be purchased at the expense of the juvenile offender. (4-6-05)()

04. Clothing in Independent Living Programs. Contract provider must ensure that the juvenile offender has sufficient clothing as defined in Subsection 210.01 of these rules. The contract provider may require the juvenile offender to purchase clothing as part of the independent living program. Any requirement that the juvenile offender purchase clothing must be documented as part of the independent living program. ()

211. FOOD SERVICE.

Juvenile offenders shall be served a varied and nutritional diet with menus approved or developed by a qualified nutritionist or dietician and which meet the recommended dietary allowances of the National Research Council or its equivalent. Juvenile offenders must be fed three (3) meals daily in accordance with the child care licensing rules of the Idaho Department of Health and Welfare. (4-6-05)()

212. PERSONAL FUNDS.

01. Funds Handled by a Contract Provider. The contract provider will follow accepted accounting practices in managing personal funds of juvenile offenders and in accordance with Section 213 of these rules. (4-6-05)()

a. A contract provider shall be required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account specifically designated "Juvenile Personal Funds" and to maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the "Juvenile Personal Funds" account. If the funds are collected in an interest bearing account, the interest accrued must be credited to the juvenile offender for whom the funds are collected. In independent living programs, the required personal account may be opened by the juvenile offender and will be maintained by him as a part of his competency development. (4-6-05)()

b. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the contract provider, shall be documented, signed, and dated by the juvenile offender. This documentation shall be reconciled to the juvenile offender's ledger monthly. (4-6-05)()

c. A contract provider may limit the amount of any withdrawal. (4-6-05)

d. A contract provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies ~~which~~ that are to be provided by the contract provider, such as clothing, toiletries, linen, laundry, drug screens, routine supplies, and lunch money, except where juvenile offenders are required to purchase these items as part of an independent living program. (4-6-05)(____)

02. Reporting Requirements. A report shall be filed quarterly with the department's quality assurance staff as part of the report in Subsection 200.02 of these rules. The personal funds report shall show a list of all juvenile offender account balances, date of admission and, if appropriate, the date of transfer or release from department custody. The personal fund account is subject to review ~~or~~ and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts shall be resolved within fourteen (14) calendar days of notification. (4-6-05)(____)

03. Transfer of Personal Funds. When a juvenile offender is released from department custody or transferred to another program, the balance of the juvenile offender's account shall be given to or mailed to the juvenile offender within five (5) business days and documented on the Contract Provider Juvenile Check-Out Form supplied by the department. (4-6-05)(____)

04. Juvenile Offenders with Earned Income. The contract provider is responsible for maintaining and accounting for any money earned by a juvenile offender. These funds are to be deposited in the personal funds account. ~~The contract provider shall establish a written plan, as part of the service implementation plan, for the juvenile to save at least ten percent (10%) of his net earnings. The plan shall specify the purpose for which funds saved will be used at program completion, such as deposits on utilities and housing, or purchase of tools necessary for employment.~~ Additionally, there shall be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. (4-6-05)(____)

a. The contract provider shall establish a written plan for a juvenile offender in non-independent living programs for the juvenile offender to save at least ten percent (10%) of net earnings. The plan shall specify the purpose for which the funds saved will be used at program completion, such as paying deposits on utilities and housing or the purchasing of tools necessary for employment. (____)

b. The contract provider shall establish a written plan for a juvenile offender in independent living program, as part of the service implementation plan, for the juvenile offender's use of these funds. The plan shall specify how the funds will be used as part of the independent living program. (____)

213. RESTITUTION.

A contract provider may utilize a portion of a juvenile offender's personal funds or earned income for the payment of restitution to victims or for program damages according to these rules. (4-6-05)(____)

01. Victim Restitution. Except for those juvenile offenders identified in Subsection 212.04 of these rules, victim and court ordered restitution shall be a claim against and paid from the juvenile offender's personal funds account in the amount of fifty percent (50%) of those funds. Should the juvenile offender have no other funds available, then a plan must be developed by the contract provider to assist the juvenile offender in earning the amount of restitution and, if appropriate, help him develop a payment plan. (4-6-05)(____)

02. Restitution for Damages. Restitution for damages at the program will not be paid to the exclusion of victim or court ordered restitution. The contract provider shall not access the juvenile offender's account for program damages without following the disciplinary process provided in these rules. (4-6-05)(____)

a. Restitution may be ordered as part of the disciplinary process when a juvenile offender has willfully damaged or destroyed property, has caused or attempted to cause injury to himself, other juvenile offenders or staff resulting in expenses being incurred, or has a pattern of falsely alleging injury or illness with the result that medical expenses are incurred. (4-6-05)(____)

b. "Actual Cost" restitution may be imposed when property is destroyed and when an incident results in outside medical care for staff or juvenile offenders. (4-6-05)(____)

c. In no instance shall a contract provider withdraw all funds in a juvenile offender's account to satisfy restitution for program damages. (4-6-05)()

03. Disciplinary Process. All juvenile offenders shall be afforded an administrative hearing in accordance with the disciplinary procedure of the contract provider and standards set forth in these rules. (4-6-05)()

214. NOTIFICATION OF DEATH OF A JUVENILE OFFENDER.
In the event of the death of a juvenile who is in the department's custody, the contract provider shall immediately notify the regional facility, juvenile offender's parent or guardian, the local coroner, and law enforcement. Other notifications will be coordinated between the contract provider and the department. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

216. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT COMPLIANCE (PREA).

01. Sexual Misconduct. The contract provider, in accordance with the PREA, shall have written policy and procedures that promote zero tolerance of sexual activity among juvenile offenders or between juvenile offenders and staff or volunteers, regardless of consensual status. The policy and procedures shall contain, at a minimum, the following provisions: ()

a. The contract provider shall inform juvenile offenders of the means available to safely report rape and sexual activity and shall document this notice to juvenile offenders; ()

b. The contract provider shall provide two (2) or more avenues for a juvenile offender to report rape and sexual activity; ()

c. The contract provider shall have a process that requires reporting and documentation of any instance of sexual misconduct among juvenile offenders or between juvenile offenders and staff or volunteers, according to Subsection 262.02 of these rules; ()

d. The contract provider staff shall treat all information regarding sexual misconduct with confidentiality; ()

e. The contract provider shall have a process in place for an initial internal investigation when sexual misconduct is reported; ()

f. The contract provider shall separate the accused from the juvenile offender, who was the subject of alleged sexual misconduct, until the investigation is complete; ()

g. The contract provider shall document any and all steps taken to ensure the juvenile offender's safety; ()

h. Contract provider shall report alleged, illegal sexual misconduct to law enforcement for external investigation when sexual misconduct is suspected; ()

i. Contract provider shall report all sexual misconduct to appropriate licensing authority when sexual misconduct is suspected; and ()

j. The contract provider shall provide, at a minimum, one (1) hour of annual training for staff and juveniles concerning the zero tolerance for, detection of, and response to sexual misconduct with a juvenile offender, including criminal prosecution. ()

02. Reporting of Sexual Misconduct. Acts of sexual misconduct shall be reported to the department

on the form provided by the department. ()

03. Survey on Sexual Violence. If the contract provider is identified to receive the yearly "Survey on Sexual Violence" from the Bureau of Justice Statistics, the contract provider shall complete and submit the survey and supply the department with copies. ()

~~2167.~~ -- 219. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

221. STAFF QUALIFICATIONS.

01. Licenses. All individuals providing services to juveniles in the custody of the department must possess all licenses or certifications for their particular position as required by statute, rule, or by the Idaho Department of Health and Welfare, as applicable. (4-6-05)

02. Education or Experience. All individuals providing services must be qualified to do so on the basis of knowledge, skills, and abilities. In addition, certain program and professional caregivers must meet specific minimum standards for education or experience. These standards shall constitute, in part, the basis for determining the adequacy of program and professional services delivered under contractual agreement with the department. (4-6-05)

03. Position Descriptions. Contract providers shall maintain written position descriptions for every job class established in the organization. In all cases, minimum qualifications for professional level staff must meet licensure and certification requirements. In all cases, the particular job titles used by the contract provider to provide counseling, therapy, direct care, and supervision of juvenile offenders, as well as staff supervision and management, must be specifically cross-referenced with the job titles in these rules. (4-6-05)()

222. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.

01. Clinician, Counselor, or Therapist. An individual who conducts a comprehensive assessment of the psychological, behavioral, social, or familial deficits or dysfunctions presented by the juvenile offender, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment of problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. The individual may also provide individual, group, or family counseling. At a minimum, the individual must have a master's degree and be currently licensed by the state of Idaho as a Licensed Professional Counselor (LPC), Licensed Marriage and Family Counselor (LMFT), Licensed Master Social Worker (LMSW), or certified school psychologist. (4-6-05)()

02. Juvenile Services Coordinator or Social Worker. An individual who is responsible for the assessment of treatment progress, and the provision and monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology, or counseling and must be licensed as a social worker in the state of Idaho. (4-6-05)()

03. Recreational Specialist. An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile offender in connection with his overall service implementation plan. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field, or have a high school diploma and two (2) years related experience in providing recreational services to juvenile offenders. (4-6-05)()

04. Rehabilitation Specialist or Case Manager. An individual, under direct supervision, who assists the juvenile offender in implementing his service implementation plan, evaluates the juvenile offender, and maintains his case record with respect to all nonclinical matters. The rehabilitation specialist or case manager also

assists in presenting the case in staffing, communicates with appropriate individuals, including community interests, regarding the juvenile offender, and prepares written communications, under supervision, including discharge reports. The rehabilitation specialist or case manager may also serve as the social worker if properly licensed in the state of Idaho. Individuals providing this function must possess, at a minimum, a bachelor's degree from a fully accredited college or university in the social sciences or a related field. (4-6-05)(____)

05. Rehabilitation Technician or Direct Care Worker. An individual who is responsible for providing individual or group rehabilitative therapeutic services, supervising juvenile offenders' day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. (4-6-05)(____)

06. Special Education Teacher. An individual who provides a modified curriculum for those students who are eligible for services under the *Individuals with Disabilities Education Act* IDEA. This individual must hold a valid ~~teaching certificate, allowing him to teach students with educational disabilities, in the state where the services are being provided~~ standard exceptional child certificate with an endorsement as a generalist. (4-6-05)(____)

07. Teacher. An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid teaching ~~certificate in the state where the services are being provided and~~ credential in the appropriate instructional field. (4-6-05)(____)

223. PROGRAM STAFFING REQUIREMENTS.

01. General Staffing Ratios. The contract provider shall ensure that an adequate number of qualified staff are present at all times to provide rehabilitation and treatment services, supervise juvenile offenders, and provide for their health, safety and treatment needs. Staffing patterns shall ensure that professional staff ~~are is~~ available to juvenile offenders at times when they are in the program or facility. The contract provider staff should provide consistency and stability so that the juvenile offenders know the roles of each staff member. Specific staffing ratios shall be determined in each contract and shall be based on the level of intervention of the program and the risk level of the juvenile offender population. (4-6-05)(____)

02. Emergency Staffing Ratios. At all times at least one (1) staff member on duty per twenty (20) juvenile offenders in residence must be currently certified to administer first aid and cardiopulmonary resuscitation (CPR). (4-6-05)(____)

224. GENERAL REQUIREMENTS FOR TRAINING.

01. Training Plan. Training for staff and volunteers shall be conducted in accordance with a written plan approved by management and coordinated by a designated staff member. The training plan shall include: (4-6-05)

- a. Annual in-service training for all staff; (4-6-05)
- b. Those areas requiring current certification; (4-6-05)
- c. Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff shall have training in the following areas: (4-6-05)(____)
 - i. Principles and practices of juvenile care and supervision; (4-6-05)
 - ii. Program goals and objectives; (4-6-05)
 - iii. Juvenile offender rights and grievance procedures; (4-6-05)(____)
 - iv. Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA; (4-6-05)(____)

- v. Handling of violent juvenile offenders (use of force or crisis intervention); ~~(4-6-05)~~()
- vi. Security procedures (key control, searches, contraband); (4-6-05)
- vii. Medical emergency procedures, first aid, and CPR; (4-6-05)
- viii. Incident reporting; (4-6-05)
- ix. How to recognize and respond to suicidal behavior; (4-6-05)
- x. How to access emergency health and mental health care; (4-6-05)
- xi. Proper storage and dispensing of medications, as well as general signs and symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility; (4-6-05)
- xii. Appropriate response to health-related emergencies; (4-6-05)
- xiii. Training to meet the requirements of federal educational regulations; and (4-6-05)
- xiv. Training on the appropriate and safe transportation of all juvenile offenders. ~~(4-6-05)~~()
- d.** In-service training for all first-year staff shall include: (4-6-05)
 - i. Program policies and procedures; (4-6-05)
 - ii. Job responsibilities; (4-6-05)
 - iii. Juvenile offender supervision; ~~(4-6-05)~~()
 - iv. Safety and security emergency procedures (fire, disaster, etc.); (4-6-05)
 - v. Confidentiality issues; (4-6-05)
 - vi. Juvenile offender rights and grievance procedures; ~~(4-6-05)~~()
 - vii. Communicable diseases, bloodborne pathogens, and universal precautions; (4-6-05)
 - viii. Behavioral observation, adolescent psychology and child growth and development; (4-6-05)
 - ix. Effective interventions with juvenile offenders including criminogenic risk and need factors: ()
 - ~~ix.~~ Juvenile Corrections Act, balanced and restorative justice, and department rules for contract providers; (4-6-05)
 - x~~i~~. Basic security procedures; (4-6-05)
 - xii. Signs and symptoms of chemical use or dependency; (4-6-05)
 - xiii. Drug-free workplace; and (4-6-05)
 - x~~iv~~. Diversity training to include cultural awareness. (4-6-05)
- 02. Minimum Mandatory Staff Training Requirements.** Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. Therefore, all staff ~~are~~ is required to have: ~~(4-6-05)~~()

a. Eighty (80) hours of training for all staff during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and (4-6-05)

b. Forty (40) hours of training per year following the first year of employment. (4-6-05)

03. Trainer Qualifications. (4-6-05)

a. Individuals who provide instruction in areas of life, health, and safety, including but not limited to, first aid, CPR, physical intervention techniques, shall have appropriate certification which must be documented in their personnel or training file. (4-6-05)

b. Individuals who provide instruction in treatment shall have appropriate training, education, and experience which must be documented in their personnel or training file. (4-6-05)

04. Documentation of Training. Staff training records shall be kept by a designated staff person. Separate training records shall be established for each staff member and volunteer and shall include: (4-6-05)

a. Name; (4-6-05)

b. Job title; (4-6-05)

c. Employment beginning date; (4-6-05)

d. Annual training hours required; and (4-6-05)

e. A current chronological listing of all training completed. (4-6-05)

05. Training Records. Training records may be kept separately within each individual personnel file or in a separate training file. Copies of curriculum materials must be maintained. (4-6-05)

225. VOLUNTEERS.

Programs should consider soliciting the involvement of volunteers to enhance and expand their services. However, volunteers recruited to supplement and enrich a program, may not be substituted for the activities and functions of facility staff. Volunteers shall not be assigned sole supervision of juvenile offenders. (~~4-6-05~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

227. INTERNS.

Programs should consider involving interns to enhance and expand their services. However, interns recruited to supplement and enrich a program, may not be substituted for the activities and functions of facility staff. Interns shall not be assigned sole supervision of juvenile offenders. (~~4-6-05~~)(____)

01. Written Plan. Programs that utilize interns regularly shall have a written plan that includes stipulations for their use and training. Training provided must include all of the information necessary for the interns to successfully perform their roles within the program. (4-6-05)

02. Intern Requirements. (4-6-05)

a. Interns must be documented to be enrolled in an accredited school or program for the profession, must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position; (4-6-05)

b. Interns must have a fully developed internship or practicum agreement which details their activities

for the period, and relates these to learning objectives developed with the academic institution and program in which they are enrolled. The internship agreement must include the signatures of the intern, supervising contract provider staff, and a representative of the academic institution in which the intern is enrolled. (4-6-05)

c. Interns must agree in writing to abide by all policies and standards of conduct, and must agree to meet the ethical standards for the profession for which they are training; (4-6-05)

d. Interns who perform professional services must be licensed or certified as required by state law or rule, or must be documented to be supervised directly by staff meeting those credentials; (4-6-05)

e. Interns must agree to background and criminal record checks as prescribed by state law. (4-6-05)

03. Supervision. An intern will be supervised by a paid employee of the contract provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern. Intern performance shall be evaluated periodically and evidence of this evaluation made part of the work record of the intern. (4-6-05)

04. Documentation. Contract provider shall maintain individual personnel files for each intern working in the program. The files shall contain all documentation as described in Subsection 227.02 of these rules. (4-6-05)

05. Termination. There will be a procedure established for the termination of interns when substantial reasons for doing so exist. (4-6-05)

228. CRIMINAL BACKGROUND CHECKS.

All contract providers providing services to the department shall ensure that all employees, interns, and volunteers, as required by law, have undergone a criminal background check in the manner and form required by IDAPA 16.05.06, "~~Rules Governing Mandatory~~ Criminal History Checks and Background Checks." In addition to the crimes listed resulting in unconditional denial, any crime not specified there that requires registration on the sex offender registry in Idaho or any other state, will also result in an unconditional denial of employment for direct care or services, or where the employee would have any opportunity to have contact with a juvenile offender in the contract provider's care. Documentation of appropriate requests and responses shall be kept in confidential employee personnel files. (4-6-05)(____)

229. DRIVERS.

All drivers of vehicles transporting a juvenile offender must possess a valid Idaho driver's license and the proper licenses required by state law for the type of motor vehicle operated. All such operators' driving records must be checked through the Department of Motor Vehicles for the preceding three (3) years and annually after date of hire. During that time, the operator must not have had any felony traffic convictions or withheld judgments. Any incidents of suspended licenses during that time must be specifically reviewed by the contract provider. Personnel files must contain evidence of training to transport a juvenile offender as well as other appropriate documentation. When parents, guardians, or others are allowed to transport a juvenile offender for any reason, it is the responsibility of the contract provider to ensure that the individual holds a current and valid driver's license. (4-6-05)(____)

230. -- 239. (RESERVED).

240. JUVENILE'S OFFENDER RIGHTS AND RESPONSIBILITIES.

01. Contract Provider Obligations. The contract provider must observe, and not infringe upon, the rights of each juvenile offender in its facility or program. The contract provider shall also be responsible for understanding the rights and responsibilities of juveniles in custody, and knowing which rights have been forfeited as a result of being placed in custody. (4-6-05)(____)

02. Religious Services and Special Needs. Each juvenile offender and his family will be advised in writing of the obligation of the contract provider to allow access to appropriate religious services, and to make reasonable accommodations for any disabilities, language barriers, or other special needs. A signed copy of this

notice shall be placed in the juvenile offender's file. (4-6-05)(____)

03. Juveniles' Offender Program Responsibilities. The contract provider shall inform each juvenile offender, upon admission to its program, of his responsibilities during the program. Additionally, each juvenile offender shall have an understanding of the following program expectations: (4-6-05)(____)

a. Requirements needed to complete program; (4-6-05)

b. How to access medical services; (4-6-05)

c. How to file a grievance; *and* (4-6-05)(____)

d. How to report incidents of sexual misconduct between juvenile offenders or between staff and juvenile offenders; and (____)

~~e.~~ How to contact his juvenile services coordinator and juvenile probation officer. (4-6-05)

241. DISCIPLINE OF JUVENILE OFFENDERS.

01. Written Policies and Procedures. All providers offering treatment services shall have comprehensive written discipline policies and procedures, which shall be explained to all juvenile offenders, families, and staff. These policies shall include positive responses for appropriate behavior. They shall include a provision for notice to the juvenile offender being disciplined, a mechanism for a fair and impartial hearing by a disciplinary board, and a process for appeal. (4-6-05)(____)

02. Problem Resolution. Disciplinary actions are not the same as the consequences that are spelled out as a part of a service implementation plan for the juvenile offender. A contract provider shall make every effort to resolve problems with the least amount of formal disciplinary activity possible. Efforts should be made first to instruct and counsel the juvenile offender. Any restriction of a juvenile offender's participation in a program resulting from a formal disciplinary action must be reported in an incident report. (4-6-05)(____)

242. FORMAL DISCIPLINARY PROCESS.

01. Prior to and upon Initiating a Formal Disciplinary Action. Prior to and upon initiating a disciplinary action, careful attention should be given to the program rules to determine the seriousness of the misbehavior and the appropriate type of discipline. (4-6-05)

02. Control of Juvenile Offenders. Staff will make every effort to maintain control of juvenile offenders through positive methods. (4-6-05)(____)

03. Discipline. Discipline will be administered in a way to create a learning experience for the juvenile offender, and never in a way that degrades or humiliates a juvenile offender. (4-6-05)(____)

04. Other Juvenile Offenders. No juvenile offender shall supervise nor carry out disciplinary actions over another juvenile offender. (4-6-05)(____)

05. Prohibited Actions. The contract provider is prohibited from using certain actions as disciplinary responses as listed in the child care licensing rules of the Idaho Department of Health and Welfare. (4-6-05)

06. Denial of Services. Denial of the following are prohibited as disciplinary responses: (4-6-05)

a. Educational and vocational services; (4-6-05)

b. Employment; (4-6-05)

c. Health or mental health services; (4-6-05)

- d. Access to family, juvenile probation officer, and legal counsel; and (4-6-05)
- e. Religious services. (4-6-05)

243. APPEAL OF FORMAL DISCIPLINARY PENALTIES.

Each contract provider shall have a formal written process through which a juvenile offender can appeal a disciplinary action and receive a review of his case. The contract provider shall explain to the juvenile offender how to use the appeal process. The juvenile offender must be informed that in any event he may include his juvenile services coordinator in the disciplinary process. (4-6-05)(____)

244. ROOM RESTRICTIONS.

The contract provider shall have written policies and procedures regulating the use of the juvenile offender's room for "room restriction." The policy shall ensure that there are procedures for recording each incident involving the use of restriction. The reason for the room restriction shall be explained to the juvenile offender and he shall have an opportunity to explain the behavior. Other less restrictive measures must have been applied prior to the room restrictions. ~~A juvenile offender in room restriction shall have access to the bathroom. Staff shall check on a juvenile offender in room restriction a minimum of once every fifteen (15) minutes. Room restriction may only be used in an unlocked area. Room restriction shall not exceed a total of eight (8) hours within a twenty-four (24) hour period. Contract providers must ensure that a juvenile offender with a history of depression or suicidal ideation and those who have exhibited these behaviors while in care, are checked at least every five (5) minutes in order to ensure their his safety. Additionally, Even more frequent or constant observation must be maintained if any level of suicide precaution is initiated, constant observation must be maintained~~ risk is determined to be present at any time during room restriction. All items in the area that might be used to attempt self-harm should be restricted or removed. (4-6-05)(____)

245. BATTERY ON STAFF.

All instances of battery committed on staff shall be documented and, whenever appropriate, charges filed with the appropriate authorities. Each such incident shall be reported to the juvenile offender's juvenile services coordinator as an incident report according to Subsection 262.02 of these rules. (4-6-05)(____)

246. GRIEVANCE PROCEDURES.

01. Written Procedures. Each program shall have a written grievance procedure for juvenile offenders, which includes the right to appeal disciplinary actions against them if a separate disciplinary grievance procedure is not available. It shall be written in a clear and simple manner and shall allow juvenile offenders to make complaints without fear of retaliation. (4-6-05)(____)

02. Grievance Forms. The grievance procedure shall be explained to the juvenile offender by a staff member who shall enter a note into the juvenile offender's file confirming the explanation. Grievance forms shall be in a location accessible to juvenile offenders without having to request such a form from staff. Completed forms should be placed in a secure area until collected and processed weekly. A copy of the grievance and the resolution of that grievance must be attached to the quarterly report as specified in Subsection 200.02 of these rules. (4-6-05)(____)

247. LETTERS.

01. Restrictions. Juvenile offenders shall be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There shall be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. However, juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence, and for at least two (2) personal letters each week. (4-6-05)(____)

- 02. Inspection of Outgoing Letters.** (4-6-05)

- a. Outgoing letters are to be posted unsealed and inspected for contraband. (4-6-05)
- b. Exception: Outgoing “privileged” mail may be posted, sealed and may not be opened, except with a search warrant, as long as it can be confirmed to be to an identifiable source. For purposes of this rule, “an identifiable source” means that the official or legal capacity of the addressee is listed on the envelope and that the name, official or legal capacity, and address of the addressee ~~has~~ have been verified. Possible identifiable sources are the following: (4-6-05)(____)
- i. Court(s); (4-6-05)
- ii. Attorney(s); (4-6-05)
- iii. Juvenile services coordinator, or director of the Idaho Department of Juvenile Corrections; (4-6-05)
- iv. Other state and federal departments, agencies and their officials; and (4-6-05)
- v. Members of the press. (4-6-05)
- c. Upon the determination that the mail is not identifiable as privileged mail, said mail shall be opened and inspected for contraband. (4-6-05)

03. Inspection of Incoming Letters. All incoming letters must be opened by the juvenile offender to whom it is addressed and may be inspected for contraband by staff and only in the juvenile offender’s presence. (4-6-05)(____)

04. Reading of Letters. Routine reading of letters by staff is prohibited. The department or court may determine that reading of a juvenile offender’s mail is in the best interest of the juvenile offender, and is necessary to maintain security, order or program integrity. However, such reading of mail must be documented and unless court ordered, must be specifically justified and approved by the juvenile services coordinator. Under no circumstances shall a juvenile offender’s privileged mail be read. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

249. PUBLICATIONS.

Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system shall be approved, unless deemed to constitute a threat to the security, integrity, or order of the programs. Juvenile offenders will not be allowed to enter into subscription agreements while in department custody. (4-6-05)(____)

250. DISTRIBUTION OF MAIL.

The collection and distribution of mail is never to be delegated to a juvenile offender. Staff shall deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed. (4-6-05)(____)

251. VISITATION.

The contract provider shall develop written rules governing visiting at the facility and shall provide a copy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. Visitation policy must include specific restrictions on those under the influence of alcohol or drugs. In all cases, the contract provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the contract provider’s criteria. The contract provider is responsible for developing and implementing policy concerning visitation which protects the safety of visitors, staff, and juvenile offenders. This may restrict visitation below an established age or provide for higher levels of supervision in circumstances where safety may be at risk. (4-6-05)(____)

252. PERSONAL SAFETY.

01. Responsibility. Every juvenile offender has the fundamental right to feel safe. Contract providers have the responsibility to ensure that ~~a juveniles~~ offender is safe while in their care. Every juvenile offender shall be informed of procedures whereby a professional staff person can be contacted on a twenty-four (24) hour basis if the juvenile offender does not feel safe. (4-6-05)(____)

02. Periodic Contacts. The contract provider's managers should make periodic contact with juvenile offenders in the program to determine if they feel safe and are comfortable when interacting with peers and staff. (4-6-05)(____)

253. SMOKING AND SALE OF CIGARETTES.

01. Purchase or Use. Juveniles in department custody, regardless of age, are strictly prohibited from purchasing or using tobacco products. (4-6-05)

02. Written Policies. Every contract provider shall establish written policies and procedures banning the use of cigarettes and other tobacco products by juvenile offenders at the facility. (4-6-05)(____)

254. RESEARCH.

01. Written Policies. Residential and nonresidential programs shall have written policies regarding the participation of juvenile offenders in research projects. Policies shall prohibit participation in medical or pharmaceutical testing for experimental or research purposes. (4-6-05)(____)

02. Voluntary Participation. Policies shall govern voluntary participation in nonmedical and nonpharmaceutical research programs. However, juvenile offenders shall not participate in any research program without prior written approval from the director or designee. (4-6-05)(____)

255. -- 259. (RESERVED).

260. PROGRAMMING.

01. Basic Program Requirements. Contract providers offering residential and nonresidential programs for juvenile offenders must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be research-based, gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of ~~the~~ juvenile offenders to the community without committing further crimes. (4-6-05)(____)

02. General Requirements. (4-6-05)

a. Contract providers must provide a range of program services specifically designed to address the characteristics of the target population identified in the comprehensive program description and in the admission policy. (4-6-05)

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders, and those programs serving sexually abusive juvenile offenders, must be able to demonstrate that the program services offered are supported by research. (4-6-05)(____)

c. Programs serving female juvenile offenders must be able to demonstrate that the services provided include elements of a program specific to the unique situations and circumstances facing female juvenile offenders. These elements must be clearly identified and described within the program description. (4-6-05)(____)

d. Programs designed to serve juvenile offenders with gang involvement must be able to demonstrate that the services provided include elements of a program specifically designed to address gang involvement. These elements must be clearly identified and described within the program description. (____)

de. Program services for individual juvenile offenders must be designed based upon a documented assessment of strengths, as well as needs and risks, and must target those behaviors or circumstances which have contributed to the juvenile's delinquency and which can reasonably be changed (criminogenic needs). These services must be clearly identified and described within the program description. (4-6-05)(____)

ef. Professional level services offered as a part of the program must be provided by staff meeting the requirements set forth in Sections 220 through 222, of these rules. (4-6-05)

fg. Progress made by individual juvenile offenders in each service area, that is a portion of the service implementation plan, must be documented in at least monthly progress notes and reported in written progress reports at least every two (2) months. (4-6-05)(____)

gh. Programs that contract with the department to serve juvenile offenders and their families must: (4-6-05)(____)

i. Provide humane, disciplined care and supervision; (4-6-05)

ii. Provide opportunities for juvenile offenders' development of competency and life skills; (4-6-05)(____)

iii. Hold juvenile offenders accountable for their delinquent behavior through means such as victim-offender mediation, restitution, and community service; (4-6-05)(____)

iv. Seek to involve juvenile offenders' families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; (4-6-05)(____)

v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; (4-6-05)

vi. Participate fully with the department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; (4-6-05)(____)

vii. Provide juvenile offenders with educational services based upon their documented needs and abilities; and (4-6-05)(____)

viii. To the fullest extent possible, provide balance in addressing the interests of the victim, community, and the juvenile offender. (4-6-05)(____)

hi. Reintegration services include all aspects of case planning and service delivery designed to facilitate successful return of the juvenile offender to the community. All juveniles committed to the department shall have a written reintegration plan developed as a part of their service implementation plan. (4-6-05)(____)

03. Comprehensive and Current Program Description. Contract providers must provide, and keep current with the department, a program description detailing the range of services to be provided and the methods for providing these services. The current program description will be attached to the contract. At a minimum, this program description must include: (4-6-05)

a. Target population and specific admission criteria; (4-6-05)

b. Primary and secondary treatment modalities; (4-6-05)

c. Outline of daily schedules for juvenile offenders and staff; (4-6-05)(____)

d. ~~Plans for providing~~ Description of educational services provided, including full compliance with all applicable federal and state law and rules for special education and Title I services; (4-6-05)(____)

- ~~e.~~ ~~Plans for providing~~ Description of emergency and routine health and mental health services, including psychotropic medication monitoring, unless this population is specifically excluded from admission to the program; (4-6-05)(____)
- ~~f.~~ ~~Plans for providing~~ Description of religious services, recreation services, and other specialized services provided as indicated by the needs of the identified target population; (4-6-05)(____)
- ~~g.~~ Plans for the use of volunteers to provide for support elements of the program; (4-6-05)
- ~~h.~~ Written criteria for successful completion of the program and written criteria for termination from the program prior to completion; (4-6-05)
- ~~i.~~ A thorough description of all services offered as a part of the program, including a description of the frequency of service delivery, and accounting for the costs of all services provided by consultants and subcontractors; (4-6-05)
- ~~j.~~ A detailed description of each individual treatment intervention or service area provided, such as treatment group, psycho-educational group, cognitive restructuring group, and peer group including: (____)
- ~~i.~~ The total length of the specific treatment intervention or service area; (____)
- ~~ii.~~ The overall goals of the treatment intervention or service area; (____)
- ~~iii.~~ The number of sessions in the treatment intervention or service area; (____)
- ~~iv.~~ The average length of each session; (____)
- ~~v.~~ The facilitator education and training requirements; (____)
- ~~vi.~~ The specific curriculum used in the treatment intervention or service area; and (____)
- ~~vii.~~ The number of hours per week an individual juvenile offender will participate in the treatment intervention or service area. (____)
- ~~jk.~~ A detailed description of the behavior management component of the program; and (4-6-05)
- ~~kl.~~ A copy of any memoranda of understanding with the local educational ~~authority~~ agency for providing educational services. (4-6-05)(____)

04. Advance Notice of Program or Population Changes. Contract providers shall notify the department as soon as possible, but no later than thirty (30) calendar days, before there is a change in the name of the organization, type of service, characteristics of juveniles being served, changes in the licensed capacity of the facility, closure of the facility, changes in ownership or in the organizational structure. (4-6-05)

261. PROGRAM POLICY REQUIREMENTS.

- 01. Written Policies.** Programs must have, at a minimum, the following written policies concerning program operations available at the program site. (4-6-05)
- a.** Program elements and implementation. (4-6-05)
- b.** Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program. (4-6-05)
- c.** Criteria for assigning juvenile offenders to different units within the program, if applicable. (4-6-05)(____)

- d.** The provision of (or referral for) emergency and routine health and mental health services for the population. (4-6-05)
- e.** The prevention and monitoring of suicidal behavior. The policy at a minimum shall require that: (4-6-05)
- i.** A suicide risk screening be completed within no more than two (2) hours of a juvenile offender's admission into a facility. The screening is done to identify an immediate threat of suicide or self-harm and the need for a suicide risk assessment. Further, the screening is a system of structured and documented observation, interview and review of behavioral, medical, and mental health information. (~~4-6-05~~)()
- ii.** A suicide risk assessment, if appropriate, be completed by a mental health professional for the purpose of determining the level of immediate risk of a juvenile offender attempting suicide. A suicide risk assessment is a system of structured and documented observation, interview and review of behavioral and mental health information. It comprises a thorough review of recent behavioral and mental health information, interviews of staff and the juvenile offender concerning the behavior that seems to present the threat of self-harm or suicide and the development and dissemination of a safety plan to address the risk as it is determined to exist. A suicide risk assessment typically involves an assessment of the juvenile offender's determination to act on his intentions of self-harm, a determination of the depth of his planning for making the attempt, the availability of the items or situations necessary for him to act on that plan and the lethality of the plan as expressed. Reassessment of suicide risk is made at a time determined by the mental health professional completing the assessment and is ideally completed by that same mental health professional. (~~4-6-05~~)()
- f.** Behavior management within the program, including use of points and levels, restraints, separation, detention and other types of special management. (4-6-05)
- g.** Supervision of juvenile offenders. ~~This~~ policy shall include managing juvenile offender movement within the program, including the timely transfer of behavioral information about juvenile offenders from staff at shift change. (~~4-6-05~~)()
- h.** Juvenile offenders' access to the community. ~~This~~ policy shall include use of community schools or job sites, and individual or group activities away from the program site. For residential programs, this also includes ~~day or home~~ individual community passes. (~~4-6-05~~)()
- i.** Provision of educational and vocational services. (4-6-05)
- j.** Administrative coverage in emergency situations, after regular work hours (residential only). (4-6-05)
- k.** Documentation and reporting of critical incidents to program administrators, the department and others on the community treatment team. (4-6-05)
- l.** Treatment planning and progress reporting to the department, juvenile offender, family and others on the community treatment team. (~~4-6-05~~)()
- m.** Reintegration. ~~The~~ policy shall describe criteria for successful completion of program, termination from program prior to completion, and the involvement of the department and community treatment team. (~~4-6-05~~)()
- n.** Grievances. (4-6-05)
- o.** Visitation. (4-6-05)
- p.** Correspondence, including telephone and mail. (4-6-05)
- q.** Emergency procedures in the event of a natural disaster. (4-6-05)

r. Searches of staff and visitors. (4-6-05)

s. Contract providers shall have written policie and procedures prohibiting the sexual contact by any employee with a juvenile offender. ()

t. Contract providers, in accordance with the PREA, shall have written policie and procedures that promote zero tolerance toward sexual misconduct with or among juvenile offenders in their care and zero tolerance toward the sexual assault of juvenile offenders by staff or by other juvenile offenders. ()

02. Documented Staff Training. Documented staff training on these policies must also be available for review by the department. (4-6-05)

262. PROGRAM OPERATIONAL REQUIREMENTS AND CASE MANAGEMENT.

01. General Requirements. (4-6-05)

a. Programs should provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offenders' lives that contribute to delinquency and that can be realistically changed. (~~4-6-05~~)()

b. Programs must be open to the community by encouraging appropriate telephone and mail contact between juvenile offenders and their families, by encouraging visitation, and by involving volunteers in support of the program. (~~4-6-05~~)()

c. Contract providers must structure and document services offered in the program so that continuity in case planning is obvious. Health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. Progress on goals associated with those needs must be recorded in progress notes in a case file at least monthly and in a written progress report at least every two (2) months. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. (~~4-6-05~~)()

d. Without authorization from the Idaho Department of Health and Welfare and the department, a residential care contract provider shall not admit more juveniles into care than the number specified on the provider's license. Contract providers wishing to increase capacity are responsible for contacting the Idaho Department of Health and Welfare. A copy of the written confirmation to the contract provider from the Idaho Department of Health and Welfare for verbal approval to exceed the licensed capacity shall be forwarded to the department's clinical supervisor in the region and to the department's quality assurance staff. (4-6-05)

e. Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, shall only be undertaken by court order or with the specific written authorization of the department's regional clinical supervisor, and then only with the full, informed consent of the juvenile offender, and if he is a minor, his parent or guardian. Contract providers shall not make treatment decisions solely on the results of a polygraph. Polygraphers used in this process must be able to provide documentation of specific training in the use of polygraphy with sexually abusive juvenile offenders. (~~4-6-05~~)()

02. ~~Reporting Incidents~~ Reporting Incidents Requiring Immediate Notice. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. (~~4-6-05~~)

~~a.~~ If any of the following events occur, the contract provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the department's regional state facility by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission

may be electronic or by facsimile. (4-6-05)()

~~ii~~**a.** Health and mental health emergencies, including but not limited to, every instance of emergency room access; (4-6-05)

~~iii~~**b.** Major incidents such as death of a juvenile offender, suicide, attempted suicide or threat of suicide, attempted escape, sexual misconduct among juvenile offenders or by staff, criminal activity resulting in arrest or filing a report with local law enforcement, or any relevant report made to the Idaho Department of Health and Welfare; (4-6-05)()

~~iv~~**c.** Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)

~~v~~**d.** Any use of separation or isolation for more than two (2) hours; (4-6-05)

~~vi~~**e.** Incidents of alleged or suspected abuse or neglect of juvenile offenders; and (4-6-05)()

~~vii~~**f.** Incidents involving the disclosure of criminal behavior by juvenile offenders. (4-6-05)()

~~b.~~ *In all instances of escape, the contract provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional state facility, juvenile's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile). A written incident report shall also be transmitted within twenty four (24) hours to the juvenile's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile's parent or guardian would endanger the juvenile. Transmission may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately.* (4-6-05)

053. Escapes Also Require Immediate Notice. In all instances of escape, the contract provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional state facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile offender. Transmission may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. (4-6-05)()

a. Clothing and other personal belongings shall be secured immediately and maintained in a secure place until returned to the department. (4-6-05)

b. The contract provider shall not transfer a juvenile offender at the time of an escape. The juvenile offender shall continue to be assigned to the program, although not physically present for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program choose to transfer the juvenile offender after his return, then the procedures outlined in Subsections 276.04 and 276.08, of these rules, shall apply. If the juvenile offender is apprehended, the contract provider should contact the juvenile services coordinator to plan for transfer of the juvenile offender to a regional facility for an updated assessment and for a placement decision. (4-6-05)()

034. Incidents Not Requiring Immediate Notice. (4-6-05)

a. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than ten (10) business days after the incident. (4-6-05)

b. A detailed incident report is required for each incident or activity which jeopardizes the safe operation of the facility. This would include but not be limited to: ()

i. Instances of physical assault or fighting; ()

- ii. ~~I~~Instances of lost keys or tools; ()
- iii. ~~M~~Major misconduct by one (1) or more juvenile offenders or staff; ()
- iv. ~~D~~Discovery of contraband such as weapons or drugs; and ()
- v. ~~S~~Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. (~~4-6-05~~)()

c. A detailed incident report is also required for each incident of staff or juvenile offender misconduct which results in any type of: (~~4-6-05~~)()

- i. Injury; (4-6-05)
- ii. Physical restraint; (4-6-05)
- iii. Suspension; (4-6-05)
- iv. Termination of work; (4-6-05)
- v. Program participation; (4-6-05)
- vi. Separation, isolation, or room confinement for less than two (2) hours; (4-6-05)
- vii. Detention; or (4-6-05)
- viii. Arrest of a juvenile offender. (~~4-6-05~~)()

045. Incident Report Content. Contract providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: (4-6-05)

- a. Juvenile offender's assigned unit; (~~4-6-05~~)()
- b. Date, location, and time of the incident; (~~4-6-05~~)()
- c. Witnesses and other staff and juvenile offenders involved; (~~4-6-05~~)()
- d. Persons notified with date and time of notice; (4-6-05)
- e. Type of incident by category, such as assault on staff, assault on juvenile offender, injury or illness, property damage, contraband, suicide attempt or threat, escape or attempted escape, or other misconduct; (~~4-6-05~~)()
- f. Action taken by category, such as physical restraint, separation, isolation, or room confinement with times in and out, suicide precautions, or escape precautions initiated; (4-6-05)
- g. Brief narrative description of the incident; (4-6-05)
- h. Signature of staff and reviewing supervisor; *and* (~~4-6-05~~)()
- i. Documentation of injury and medical attention provided; *and* (~~4-6-05~~)()
- j. If the incident involves sexual misconduct, the incident report must include a description of action taken to: ()
 - i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality;

- ()

ii. Address any immediate trauma, either physical or emotional; ()
- iii. Address long-term medical or mental health needs related to the alleged abuse; ()
- iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; ()
- v. Conduct an internal investigation of the incident and as necessary request that an external investigation be completed; and ()
- vi. Prevent repetition of the abusive situation. ()

06. Monitoring the Location of Juvenile Offenders. The contract provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. ~~(4-6-05)~~()

07. Nonresidential Absences. Nonresidential programs shall make reasonable efforts to ensure that the juvenile offenders attend their program daily or as otherwise specified in the service implementation plan. The nonresidential program shall inform the juvenile services coordinator of daily attendance and all attendance problems. This information must be documented in at least monthly progress notes and must be reported in written progress reports every two (2) months. ~~(4-6-05)~~()

263. FACILITY SEARCHES.

01. Periodic Searches. In order to ensure the safety of juvenile offenders, staff, and visitors, periodic facility searches for contraband shall be conducted. The frequency and extent of whole facility and ground searches should be consistent with program policies and can be included during other routine inspections or activities. Searches shall be conducted by staff trained in appropriate search techniques. Searches called by the facility staff do not have to include the entire facility, but can be limited to specific areas or juvenile offenders. Juvenile offenders' belongings shall be disturbed no more than necessary during the search. The search shall be documented in terms of who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator will be notified and it shall be reported according to the requirements of the department. If necessary, the appropriate law enforcement agency should be notified. ~~(4-6-05)~~()

02. Policies and Procedures Governing Searches. The program shall have policies and procedures for conducting searches of juvenile offenders, staff, visitors, and all areas of the facility in order to control contraband or locate missing property. It is suggested that a sign be posted notifying visitors of the specific policy of the contract provider regarding searches. ~~(4-6-05)~~()

03. Policies and Procedures Governing Consequences. The contract provider shall have written policies and procedures establishing the consequences for juvenile offenders found with contraband. Juvenile offenders should acknowledge, with their signature, that they were informed of what constitutes contraband and also the consequences for its possession. ~~(4-6-05)~~()

04. Visitor Searches. (4-6-05)

a. Prior to visitors being allowed in the facility, they shall be given rules established by the contract provider that govern their visit and advised that they may be subject to a search. They shall sign a statement of receipt of these rules and it shall be placed in the facility's file. Visitors may be required to submit packages, handbags, and briefcases for inspection by trained staff. If there is reason to believe that additional searches are necessary, admission to the facility shall be denied. (4-6-05)

b. All visitor searches shall be documented in the facility log. When contraband is found, a written

report shall be completed and submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency will be notified. (4-6-05)

264. CONTRABAND DISPOSAL.

All contraband found in the possession of juvenile offenders, visitors, or staff shall be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement shall be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the facility director, in consultation with the department, to dispose of all contraband not confiscated by police. Visitors who bring in items that are unauthorized, but not illegal, will have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the facility. ~~(4-6-05)~~(____)

265. SEARCHES OF PERSONAL ITEMS.

Routine searches of suitcases or personal items being introduced into the facility will be conducted by facility staff prior to the juvenile offender taking possession of his property, or when the juvenile offender is returning to the facility from an ~~home~~ individual community pass. Search of a juvenile offender's belongings may be done at any time and shall be minimally intrusive. All searches shall be documented in the facility log and, if contraband is found, a written incident report must be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. ~~(4-6-05)~~(____)

266. JUVENILE OFFENDER PAT DOWN SEARCHES.

01. Necessity. Pat down searches of juvenile offenders may be conducted whenever the contract provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A pat down search may be used when a juvenile offender is returning from a visit, or outside appointment, or activity. ~~(4-6-05)~~(____)

02. Pat Down Searches. Pat down searches shall be conducted in the manner required by the child care licensing rules of the Idaho Department of Health and Welfare. (4-6-05)

03. Documentation. All pat down searches shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-6-05)

267. JUVENILE OFFENDER STRIP SEARCHES.

01. Reasonable Suspicion. Strip searches may be performed by facility staff, only after a pat down search, whenever there is reasonable suspicion to believe that weapons or contraband may be found through additional searches. Strip searches shall be authorized by the facility director or designee and conducted strictly in the manner required by the child care licensing rules of the Idaho Department of Health and Welfare. (4-6-05)

02. Documentation. All strip searches shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-6-05)

268. DRUG SCREENS OF JUVENILE OFFENDERS.

Drug screens may be done randomly or on an as needed basis at the contract provider's expense with the approval of the contract provider's director. A record shall be kept of all drug screens and results. A positive drug screen shall immediately be reported to the juvenile services coordinator supervising the case. ~~(4-6-05)~~(____)

269. USE OF FORCE OR PHYSICAL RESTRAINTS.

Contract providers, licensed by the Idaho Department of Health and Welfare, must ensure that all terms of the child care licensing rules of the Idaho Department of Health and Welfare are strictly followed, ~~as appropriate~~. Additionally, licensed and non-licensed contract providers must ensure that: ~~(4-6-05)~~(____)

01. Minimal Use. Only the minimum level of force necessary to control a juvenile offender's destructive behavior shall be used. ~~(4-6-05)~~(____)

02. Physical Force. Physical force, at any level, may only be used to prevent injury to the juvenile offender or to others and to prevent serious damage to property or escape. Physical force shall never be used as punishment. (4-6-05)(____)

03. Reporting Requirement. All instances of ~~inappropriate~~ use of force must be documented in an incident report and submitted ~~to the juvenile services coordinator~~ according to the terms of Subsection 262.02 of ~~these rules.~~ These incidents of inappropriate use of force must be reported to the Idaho Department of Health and Welfare, or law enforcement as required by law. (4-6-05)(____)

270. DISPOSITION OF REFERRALS FROM THE DEPARTMENT.

A juvenile offender's admission into a program shall be based on an assessment of the juvenile offender's strengths, problems, risks and needs, and on the anticipated ability of the program to reasonably address those issues. Contract providers shall ensure that the juvenile offender and parent or guardian are provided an opportunity to participate in the admission process and related decisions. (4-6-05)(____)

01. Accepting Referral. Upon receipt of a complete referral packet from the department, the contract provider has two (2) business days in which to decide whether to accept or decline the referral. Upon acceptance, the Referral Acceptance/Denial Form, attached to the referral packet, must be completed and signed. By accepting the referral, the contract provider agrees to address the identified treatment goals and the anticipated length of stay. Once the acceptance has occurred, the juvenile offender's transportation will be made. (4-6-05)(____)

02. Declining Referral. Contract providers shall not, without just cause, deny admission to any juvenile offender who meets the specific admission criteria set forth in the program description. If a contract provider denies a referral, the specific reason for denial must be documented on the department's Referral Acceptance/Denial Form and the form returned to the regional referral coordinator. The contract provider shall then shred the referral packet. (4-6-05)(____)

03. Change in Admission Criteria. Any change in the contract provider's admission criteria must be reflected in the admission policy and requires a written amendment to the contract with the department. Temporary exceptions are covered under Section 101, of these rules. (4-6-05)

271. ONGOING TREATMENT AND CASE MANAGEMENT.

The juvenile offender must always be aware of the status of his progress within the program and what remains to be done to complete the program. Contract providers must assure that the basic norms and expectations of the program are clearly presented to the juvenile offender and that they are understood. Any points, levels or phases that are a fundamental part of a program must be clearly understood by the juvenile offender in the program. Each juvenile offender's progress, or lack of progress, through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. (____)

01. Service Implementation Plan. Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must ~~relate services to be provided for each juvenile to the risks, needs and competencies~~ address the specific goals identified in the service plan from the observation and assessment report ~~provided by the department for that juvenile.~~ The service implementation plan should, at a minimum, address the following areas as indicated by need: (4-6-05)(____)

- a. Health; (4-6-05)
- b. Mental health; (4-6-05)
- c. Substance abuse; (4-6-05)
- d. Social skills; (4-6-05)

- e. Education; (4-6-05)
- f. Vocations; (4-6-05)
- g. Independent living; (4-6-05)
- h. Other special needs; ~~and~~ (~~4-6-05~~)()
- i. Progress notes from the initial period of placement in the program; and (~~4-6-05~~)()
- j. Reintegration plan. ()

02. Family Involvement. Each juvenile offender and, to the fullest extent possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. (~~4-6-05~~)()

03. Department Assessments. Assessments provided by the department shall not be repeated by the contract provider at the time of admission into the program without specific justification provided to the regional clinical supervisor. (4-6-05)

04. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. (4-6-05)

05. Progress Notes. Monthly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan. (~~4-6-05~~)()

06. Education Plan. A copy of the juvenile offender's education plan shall be a component of the service implementation plan. This education plan shall include the juvenile offender's course of study (GED, secondary, post-secondary, etc.), long-term educational goals and short-term objectives, and shall comply with all state and federal laws. If the juvenile offender has been identified as eligible to receive services under Section 504 of the federal Rehabilitation Act of 1973 (Section 504) or the federal ~~Individuals with Disabilities Education Act (IDEA)~~, a copy of the ~~Individualized Educational Plan (IEP)~~, and supporting documentation shall be ~~available for review by the department and the Idaho Department of Education~~ sent to the department's education manager at the juvenile correctional center in Nampa within ten (10) days from development. The education plan shall be updated and submitted yearly to the juvenile correctional center in Nampa while the education progress reports shall be submitted every other month. Written educational progress (report cards) shall be submitted to the department's education manager at the juvenile correctional center in Nampa at the end of each school's grading period, e.g. quarter, semester, trimester, etc. (~~4-6-05~~)()

a. Contract providers may choose to utilize the department's software program provided by the department for managing special education students' paperwork. ()

b. If this option is selected, an e-mail to the education records manager at the juvenile correctional center in Nampa will be required stating that the required documents have been completed in the software program. It will not be necessary to mail hard copies of the documents. ()

07. Progress Report. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 271.01, of these rules, should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. A written progress report must be submitted to the juvenile services coordinator at least every two (2) months. (4-6-05)

08. Report Distribution. Copies of the progress report shall be distributed by the contract provider to

the juvenile offender and the juvenile services coordinator. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. (4-6-05)(____)

~~a. The juvenile must always be aware of the status of his progress within the program and what remains to be done to complete the program. (4-6-05)~~

~~b. Programs must provide an educational program that is tailored to each juvenile's educational level, abilities, problems, and special needs, and improves educational performance and vocational skills while in care. (4-6-05)~~

~~c. Each juvenile should have a written individual learning plan for education based upon assessed academic, emotional, developmental and behavioral needs, and competencies. Juveniles determined to be eligible for special education must be provided these services. The provision of these services and the progress made academically must be documented regularly in a separate educational file. Juveniles qualifying for special education must have a valid IEP available for review by the department and the Idaho Department of Education. A copy of the IEP and all supporting documentation must be sent to the department's education records manager within ten (10) business days or less of its completion for inclusion in the student's permanent school records that are maintained at the juvenile correctional center in Nampa. (4-6-05)~~

~~d. Contract providers must assure that the basic norms and expectations of the program are clearly presented to juveniles and that they are understood. Any points, levels or phases that are a fundamental part of a program must be clearly understood by juveniles in the program. Each juvenile's progress, or lack of progress, through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. (4-6-05)~~

272. INDIVIDUAL COMMUNITY PASSES.

Prior to granting ~~a day pass or a home~~ any individual community pass to a juvenile offender, the contract provider shall contact the juvenile probation officer and the juvenile services coordinator to ensure that neither the court nor the department has placed restrictions on the juvenile offender's pass privileges. All requests for passes must be approved by the juvenile services coordinator. Any pass involving an overnight stay away from the facility, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an individual community pass, the contract provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. (4-6-05)(____)

01. Potential Risk to Public Safety. All passes for juvenile offenders assigned to residential facilities should be considered as an integral part of the service implementation plan. However, in all cases, the potential risk to public safety and adequacy of home supervision shall be considered prior to allowing a juvenile offender to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juvenile offenders. Contract providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's ~~Off-Campus P~~pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision, the pass must contain at least the following information: (4-6-05)(____)

- a. The juvenile offender's name and date of birth; (4-6-05)(____)
- b. The name, address and telephone number of the individual assuming responsibility; (4-6-05)
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; (4-6-05)

- d.** A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; (4-6-05)(____)
- e.** Specific plans for supervision and telephone checks to verify compliance with the pass conditions; (4-6-05)
- f.** A complete listing of the activities required during the pass; (4-6-05)
- g.** Specific stipulations prohibiting: (4-6-05)
- i.** The use of alcohol, tobacco, and drugs; (4-6-05)
- ii.** Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; (4-6-05)
- iii.** Participation in sexual relations of any kind; (4-6-05)
- iv.** Possession of any kind of firearm or weapon; (4-6-05)
- v.** Any violation of the terms of probation; and (4-6-05)
- h.** Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. (4-6-05)

02. Eligibility. A juvenile offender must be in placement a minimum of thirty (30) calendar days before he is eligible for any pass. Any exceptions due to extenuating circumstances must be approved by the juvenile services coordinator. (4-6-05)(____)

03. Frequency. Frequency of passes shall be consistent with the terms of the juvenile offender's service implementation plan and contract provider's contract with the department. (4-6-05)(____)

04. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and his return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. (4-6-05)(____)

273. GROUP ACTIVITIES OFF FACILITY GROUNDS.

An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay, and why the activity is being planned must be submitted to the juvenile services coordinator at least five (5) business days prior to the activity. The activity plan must identify the specific risk elements associated with the activity and provide a safety plan for each of those risk elements. Routine, low risk activities within the local community adjacent to the facility do not require prior notice, and are to be conducted at the discretion of and under the responsibility of the contract provider. (4-6-05)

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk, such as overnight trips, must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves rafting, boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the clinical services administrator. (4-6-05)(____)

02. Staff Requirements. (4-6-05)

a. A basic first aid kit and current Red Cross First Aid Manual will be taken with the group. At least one (1) person certified in first aid and CPR shall accompany the group. (4-6-05)

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in basic rescue and water safety, water safety instruction, or Red Cross life saving. All juvenile offenders involved in

boating or rafting activities must wear an approved personal flotation device. (4-6-05)(____)

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of juvenile offenders *below* under age twelve (12), are some reasons to consider additional staff. (4-6-05)(____)

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. (4-6-05)

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 273.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the clinical services administrator. Consent shall include: (4-6-05)(____)

- a.** Permission for the juvenile offender's participation; (4-6-05)(____)
- b.** Acknowledgement of planned activities; and (4-6-05)
- c.** Permission for the contract provider to seek or administer necessary medical attention in an emergency. (4-6-05)

04. Consumption. There will be no consumption of alcoholic beverages or illicit drugs by staff or juvenile offenders or volunteers while engaged in any agency-sponsored trip or activity. (4-6-05)(____)

274. ACTIVITY REPORTS.

At the conclusion of each pass or group activity, the contract provider shall determine whether any problems occurred or other significant positive or negative events transpired while the juvenile offender was on pass. This information shall be documented in the juvenile offender's file. Any unusual occurrences shall be reported to the juvenile services coordinator and documented on an incident report. A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the contract provider, and the results of that exam reported to the juvenile services coordinator. (4-6-05)(____)

275. OUT-OF-STATE TRAVEL.

When a contract provider is planning an out-of-state trip for any of its juvenile offenders, the facility administrator shall obtain prior written authorization from the regional clinical supervisor or designee. The necessary sequence of action and approval is as follows: (4-6-05)(____)

01. Notification. The contract provider shall notify the juvenile services coordinator in writing two (2) weeks in advance of the scheduled trip with the following: (4-6-05)

- a.** Dates of the scheduled trip; (4-6-05)
- b.** Location of the trip; (4-6-05)
- c.** Purpose of the trip; (4-6-05)
- d.** Transportation arrangements; (4-6-05)
- e.** Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and (4-6-05)(____)
- f.** Who is going, such as juvenile offender, and name and position of staff. (4-6-05)(____)

02. Prior Approval. The administrator shall obtain all necessary approvals prior to authorizing travel. (4-6-05)

276. PLANNING FOR REINTEGRATION.

Each area of continuing need must be specifically addressed (health, mental health, substance abuse, social skills, other specialized needs). ()

01. Programs. Programs must promote continuity in programming and services for juvenile offenders after they leave the program by assuring that essential information is forwarded to those agencies that will be providing services to the juvenile offenders, and working closely with department staff throughout placement to plan for reintegration. (4-6-05)()

02. Approval. Reintegration, by release from department custody or transfer, shall not take place without the involvement of the department's assigned juvenile services coordinator, and the approval in writing of the regional clinical supervisor and regional superintendent. (4-6-05)

03. Department Concurrence. Preparation for reintegration of a juvenile offender begins with the initial development of a service plan and is an ongoing process throughout the juvenile offender's program. Criteria for the juvenile offender's release from department custody or transfer shall be explained to him as soon as possible after admission to a program. (4-6-05)()

04. Reintegration Plan. Within the first thirty (30) calendar days after a juvenile offender is admitted to a program, a written reintegration plan shall be formulated as one (1) part of the overall service implementation plan. The reintegration plan should include: (4-6-05)()

- a. The juvenile offender's anticipated length of stay; (4-6-05)()
- b. Specific program goals to be achieved while in the program; (4-6-05)
- c. Living arrangements upon release from department custody or transfer; (4-6-05)
- d. Resources necessary for the juvenile offender to continue to meet treatment goals in the community; (4-6-05)()
- e. Resources necessary for the juvenile offender to continue an appropriate education; and (4-6-05)()
- f. Terms of continued probation to the extent that they are known and addressed in progress reports. (4-6-05)

05. Written Recommendation. Contract providers shall provide to the juvenile services coordinator a written recommendation for release from department custody or transfer at least thirty (30) calendar days prior to the juvenile offender's anticipated completion of the program. This recommendation shall include: (4-6-05)()

- a. A current summary of the juvenile offender's progress; (4-6-05)()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; (4-6-05)()
- c. Any unresolved goals or objectives; (4-6-05)
- d. Reinforcement goals and objectives for parents, guardians, or reintegration workers; (4-6-05)
- e. Recommendation for continuing services, including education, in the home community; (4-6-05)
- f. The prognosis; and (4-6-05)
- g. The current address of the recommended custodian. (4-6-05)

06. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing

which will include the juvenile offender's probation officer, the contract provider, the juvenile offender's parent or guardian, an education representative, and the juvenile offender. Based upon the results of that staffing, the department will make the final decision regarding transfer or release from department custody. At a minimum, the reintegration staffing must consider and, to the extent possible, solidify plans to address any ongoing health, mental health, substance abuse, social skills, education, vocation, independent living, and other special needs. ~~(4-6-05)~~(____)

07. Check-Out Procedures. Prior to the release from department custody or transfer, the contract provider must have completed a Contract Provider Juvenile Check-Out Form supplied by the department. The form shall be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator on the actual date that the juvenile offender leaves the program. ~~(4-6-05)~~(____)

a. The contract provider shall immediately provide the juvenile offender's medication, prescriptions and Medicaid card, if applicable, to the individual or agency authorized to transport the juvenile offender. ~~(4-6-05)~~(____)

b. Within two (2) business days after a juvenile offender leaves the facility or program, the contract provider shall send any available dental or medical records to the privacy officer at the nearest department regional facility. All school records available from school(s) the juvenile offender attended while in the program shall be sent to the juvenile correctional center in Nampa. ~~(4-6-05)~~(____)

c. Within two (2) business days after a juvenile offender leaves the facility or program, the contract provider shall send a report showing the juvenile offender's total hours, credits, and associated grades directly to the juvenile correctional center in Nampa. The contract provider shall maintain adequate documentation to support the submitted education reports. Timely receipt of these records is critical to assist the transition of the juvenile offender to another educational facility. If contracted facilities choose to utilize the department's software programs provided by the department for course enrollment and grading, the contract facility education staff will enter final grades into the department's software program prior to transfer. An e-mail notification to the education records manager at the juvenile correctional center in Nampa will be required once the final grades have been entered. The hard copy of the education files shall be mailed within two (2) business days of the juvenile offender's transfer. ~~(4-6-05)~~(____)

08. Termination Prior to Completion. (4-6-05)

a. When a contract provider believes a juvenile offender is at risk for transfer prior to program completion, the juvenile services coordinator must be notified as far in advance as possible so that a staffing with the regional clinical supervisor and, if necessary, the clinical services administrator, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the contract provider to avoid the necessity of making another placement. The contract provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the contract provider. The contract provider can request transfer of a juvenile offender in the following circumstances: ~~(4-6-05)~~(____)

i. A pattern of documented behavior clearly indicating a lack of progress; or (4-6-05)

ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. (4-6-05)

b. In matters involving life, health, and safety of any juvenile in department custody, the department shall remove the juvenile offender immediately. ~~(4-6-05)~~(____)

c. A comprehensive summary shall include, at a minimum, a report on progress or lack of progress on all service implementation plan areas, and recommendations for follow-up. The summary shall be forwarded to the juvenile services coordinator within twenty-four (24) hours of release from department custody or transfer prior to program completion. (4-6-05)

d. In cases of all releases from department custody and transfers, the contract provider shall send any available dental or medical records to the privacy officer at the nearest department regional facility. All school records available from school(s) the juvenile offender attended while in the program shall be sent to the juvenile

correctional center in Nampa.

~~(4-6-05)~~()

e. The summary shall be forwarded to the department within five (5) business days of the date of transfer or release from department custody, if the juvenile offender has completed the program. ~~(4-6-05)~~()

(BREAK IN CONTINUITY OF SECTIONS)

278. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling Services. (4-6-05)

a. All counseling services provided to juvenile offenders, whether individual, group or family, must be performed by a clinician, counselor, or therapist as defined in these rules. ~~(4-6-05)~~()

b. Counseling should be planned and goal directed. (4-6-05)

c. Notes must be written for each service provided. The notes must be dated, clearly labeled either individual, group or family counseling, and each entry must be signed by the clinician, counselor, or therapist performing the service. (4-6-05)

d. The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. (4-6-05)

e. Counseling should be reality oriented and directed toward helping juvenile offenders understand and solve specific problems; discontinue inappropriate, damaging, destructive or dangerous behaviors; and fulfill individual needs. ~~(4-6-05)~~()

f. The minimum standard for the frequency of counseling services shall be specified in the comprehensive program description attached to the contract with the department. (4-6-05)

g. There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. (4-6-05)

h. Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. (4-6-05)

i. Programs must provide crisis intervention counseling if warranted by the assessment and circumstances. (4-6-05)

j. The contract provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. (4-6-05)

k. Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from his home and the issue of his eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and his family should be part of the service implementation plan. ~~(4-6-05)~~()

02. Substance Abuse Treatment Services. As a minimum standard, programs must provide substance abuse education for all juvenile offenders, and substance abuse treatment services as determined by assessment and indicated in the service implementation plan. Substance abuse treatment services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years experience in the substance abuse

field. Substance abuse treatment services must be fully described in the detailed program description and must have a written curriculum containing a description of each session offered. Juvenile offenders receiving substance abuse treatment services shall have ~~access to in-house or community Alcoholics Anonymous and Narcotics Anonymous meetings, or~~ an orientation to ~~the~~ a twelve-step program at the appropriate point in his treatment, or an introduction to a community intervention program if a twelve-step program is not appropriate for him. Relapse prevention plans must be a component of the substance abuse treatment services provided in programs offering more than substance abuse education. Relapse prevention plans must be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled "substance abuse treatment services," and each entry must be signed by the counselor performing the service. (4-6-05)(____)

03. Suicide Prevention and Risk Management. In addition to the policy required in Paragraph 261.01.e., of this rule, contract providers must be able to demonstrate that they: (4-6-05)

a. Train staff regularly to identify, document and appropriately respond to behavior that may indicate a risk of suicide; (4-6-05)

b. Utilize medical or other staff trained by a mental health professional to review history, and interview and observe juvenile offenders new to the program in order to complete suicide risk screening within two (2) hours of admission; (4-6-05)(____)

c. Utilize a mental health professional to complete a suicide risk assessment on a juvenile offender who has been identified by staff as presenting a risk of suicide; (4-6-05)(____)

d. Utilize mental health professionals to help develop a safety plan for each juvenile offender identified as presenting a risk for suicide, and to determine when that risk is reduced enough to reduce or terminate suicide precautions; and (4-6-05)(____)

e. Prohibit the use of separation and isolation of juvenile offenders identified as presenting a suicide risk, unless constant one-on-one (1 on 1) staff supervision is provided and that all juvenile offenders in separation or isolation are closely monitored to reduce the risk of suicidal behaviors. (4-6-05)(____)

04. Social Skills Training Including Relapse Prevention Skills. Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. (4-6-05)(____)

05. Health Services. Programs must be able to demonstrate compliance with the required policy concerning access to routine and emergency health and mental health care and, in addition, should provide a basic health curriculum for all juvenile offenders. Contract providers must provide and document a health and suicide risk screening of each juvenile offender within two (2) hours of admission into the program. (4-6-05)(____)

06. Vocational and Prevocational Services. Programs must be able to demonstrate that each juvenile offender's vocational interests and needs have been assessed and an appropriate level of services has been provided. These services may range from a specific vocational skills curriculum, offered on site or in the community, to a prevocational skills component, which at a minimum, involves juvenile offenders in assessing their vocational interests and strengths. (4-6-05)(____)

07. Basic Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills consistent with their age and needs. This program should include, at a minimum, instruction in: (4-6-05)(____)

a. Hygiene and grooming skills; (4-6-05)

b. Laundry and maintenance of clothing; (4-6-05)

c. Appropriate social skills; (4-6-05)

- d. Housekeeping; (4-6-05)
- e. Use of recreation and leisure time; (4-6-05)
- f. Use of community resources; (4-6-05)
- g. Money management; (4-6-05)
- h. Use of public transportation, where available; (4-6-05)
- i. Budgeting and shopping; (4-6-05)
- j. Cooking; (4-6-05)
- k. Punctuality, attendance and other employment-related matters; and (4-6-05)
- l. Vocational planning and job finding skills. (4-6-05)

08. Recreational Services. Programs should have a written plan for providing recreational services based on individual needs, interests, and functional levels of the population served. (4-6-05)

a. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of table games and other activities that encourage both solitary entertainment and small group interaction. An appropriately furnished area should be designated inside the facility for leisure activities. (4-6-05)

b. Programs should have staff educated and experienced in recreational programs to ensure good planning, organizing, supervision, use of facility, and community activities. Recreational activities considered part of the service implementation plan must be funded by the contract provider. The use of community recreational resources should be maximized, as long as community safety is assured. The contract provider must arrange for the transportation and provide the supervision required for any usage of community recreational resources. No juvenile offender shall be required to pay to participate in recreational activities made available through the program. (4-6-05)()

279. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. Programs must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The contract provider shall make periodic checks on the job-site to ensure the juvenile offender is working under acceptable conditions. The juvenile offender's employer shall be consulted regularly by the contract provider concerning the juvenile offender's work abilities and performance on the job-site. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. Contract providers must make every reasonable effort to assure that each juvenile offender's transportation to and from a job-site is safe. (4-6-05)()

02. Employment Opportunities. Every reasonable effort shall be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender shall be handled consistent with Subsection 212.04, of these rules. (4-6-05)()

280. RELIGIOUS SERVICES.

Programs must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. (4-6-05)()

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the facility. (4-6-05)(____)

02. Attendance. Juvenile offenders may be permitted to attend religious services of their choice in the community as long as community safety is ensured. (4-6-05)(____)

03. Transportation. Programs must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. (4-6-05)(____)

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has reason to believe he would attempt to escape, or otherwise present a risk to the safety of the community, the contract provider must make every reasonable effort to ensure that he has the opportunity to participate in religious services of his choice at the facility. (4-6-05)(____)

05. Visits. Juvenile offenders shall be permitted to receive visits from representatives of their respective faiths. (4-6-05)(____)

06. Minor Juvenile Offenders. When the juvenile offender is a minor, the contract provider shall make reasonable effort to comply with the wishes of the legally responsible person with regard to religious observances. A program's staff schedule shall not encourage or discourage participation in general or specific religious services or activities. (4-6-05)(____)

281. -- 299. (RESERVED).

300. EDUCATION SERVICES.

01. Appropriate Services. The contract provider shall ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Contract providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided by contract providers must use whatever combination of approaches and motivations that will best facilitate the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the No Child Left Behind Act (NCLB), the *Individuals with Disabilities Education Act* (IDEA), the Family Educational Rights and Privacy Act (FERPA), and Section 504, Rehabilitation Act of 1973 (Section 504). (4-6-05)(____)

02. Mandatory Enrollment. Contract providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the Idaho Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service shall be provided in accordance with the service implementation plan. The department shall provide contract providers access to the department's software programs to record courses and grades. When contract providers choose to use these software programs, they need not send the department report cards; they need only assure all grades are entered through the software program at the end of each grading period. (4-6-05)(____)

03. Cooperative Relationships. Contract providers may provide educational services through a cooperative agreement with the local education agency (~~LEA~~) or through an in-house educational program administered by the contract provider. If ~~an LEA~~ local education agency provides the services, it is expected that the contract provider will ~~enter into~~ have a written agreement with a local education agency that clearly defines the services ~~to~~ that will be provided in the contract facility. The written agreement must include, at a minimum, all of the following: (4-6-05)(____)

- a. Level of participation in reintegration planning for each juvenile offender; (4-6-05)(____)
- b. That grades will be submitted, as required in Subsection 300.09 of these rules, within twenty-four (24) hours of transfer or release from department custody; (4-6-05)
- c. Curriculum for special education services, if appropriate; (4-6-05)
- d. A plan for the provision of state required testing; and (4-6-05)
- e. Types of services that will be provided beyond the established limits of the regular school year for that school district. (4-6-05)

04. Costs of Educational Services. If ~~an LEA~~ local education agency agreement is developed, the Idaho Department of Education will flow education funds to the ~~LEA~~ local education agency in a manner consistent with current legislative funding mandates. A copy of the memorandum of understanding between the contract provider and the ~~LEA~~ local education agency must be provided to the department, and the source of funds to cover the costs for educational services clearly accounted for in the budget attached to the program description. If the contract provider elects to provide the services in-house, the cost of educational services will be included in the daily contract rate. The contract provider will not be eligible to receive educational funding through both of these sources. (4-6-05)(____)

05. Accreditation Requirements. Each contract provider serving juvenile offenders, who have been committed to the department, will have, or contract with, an education program that will meet the accreditation standards of the Northwest Association of Schools and of Colleges and Universities or the Idaho Department of Education. (4-6-05)(____)

06. Educational Assessment. Federal and state laws mandate that juvenile offenders be provided with an appropriate education. Contract providers are responsible for providing an educational track which will best serve the needs of each juvenile offender, as determined by the assessment provided by the department through the observation and assessment process, or as determined by an assessment completed by a local school district. A copy of the relevant assessment and related current and valid education~~#~~ plan, as well as all supporting documentation for each juvenile offender, must be maintained in a separate file and must be available to the department and to the Idaho Department of Education. A copy of the IEP and all supporting documentation must be sent to the department's education records manager within ten (10) business days or less of its completion for inclusion in the ~~student's~~ juvenile offender's permanent school records that are maintained at the juvenile correctional center in Nampa. (4-6-05)(____)

a. Contract providers are responsible for ongoing, yearly reassessment of each juvenile offender's progress within the education program as well as documenting and reporting that progress. This responsibility extends to completing a reassessment just prior to release from department custody or transfer, and reporting academic gain both for individual juvenile offenders as well as composite data for the education program overall. (4-6-05)(____)

b. Consistent with statewide educational standards, contract providers are responsible for assuring that each juvenile offender is tested twice annually using the Idaho Standards Achievement Test (ISAT). Contract providers must also administer the Direct Math and Writing Assessments or other tests mandated by the administrative rules of the Idaho Board of Education. Any fees associated with the testing services will be the responsibility of the contract provider. Results of testing shall be submitted to the department's education file manager at the juvenile corrections center in Nampa within ten (10) days after the contract providers' receipt of the scores. (4-6-05)(____)

07. GED and High School Equivalency (HSE) Eligibility. Contract providers must assure that ~~General Educational Development~~ GED tests (~~GED~~) will be administered to ~~students~~ juvenile offenders meeting the criteria established in the administrative rules of the Idaho Board of Education for school districts. Contract providers must assist ~~students~~ juvenile offenders who successfully complete GED testing with a minimum standard average score of four hundred fifty (450) and earn a credit in United States Government to apply for an Idaho ~~High School~~

~~Equivalency Certificate (HSE)~~ from the Idaho Department of Education. All GED testing and HSE application fees will be paid by the contract provider. Test results shall be submitted to the department's education records manager at the juvenile correctional center in Nampa within ten (10) days after the receipt of the scores. (4-6-05)()

08. Special Education Services. (4-6-05)

a. The contract provider shall ensure that the special educational needs of juvenile offenders are addressed. The contract provider's in-house program or cooperating ~~LEA~~ local education agency program must comply with ~~the federal~~ Section 504 and the IDEA, as well as any other applicable state or federal laws. Under no circumstances shall the contract provider or its teaching staff make modifications in the juvenile offender's Section 504 or the IDEA educational program without conducting a Child Study Team meeting in consultation with the department's educational coordinator or designee. (4-6-05)()

b. Contract providers must make every reasonable effort and thoroughly document all efforts to contact parents or guardians of juvenile offenders identified as eligible for special education. If it is not possible to involve the natural parents or guardians, a surrogate parent must be appointed by the agency providing special educational services. This surrogate cannot be the director or other employee of an agency, institution, or community-based residential facility who is involved in providing care or education to a juvenile offender, or an employee of a state agency or agency volunteer, such as caseworker, social worker, or court-appointed special advocate who has been appointed by the state to provide for the welfare of the student. A surrogate parent is used only for special educational requirements and has no other legal authority. (4-6-05)()

c. Contract providers may choose to utilize the department's special education software for managing special education paperwork. If this option is selected, an e-mail to the education records manager at the juvenile correctional center in Nampa will be required stating that the required documents have been completed in the software program. It will not be necessary to mail hard copies of the documents. ()

09. Standards for Instructional Time. Contract providers must assure that the school day is consistent with at least the minimum standard established for high schools by the Northwest Association of Schools and of Colleges and Universities. The length of the school day will further meet all requirements established by state and federal laws, regulations, and accreditation standards. Contract providers must provide an appropriate educational or vocational program for each juvenile offender for twelve (12) months of the year. At a minimum, this involves four (4) hours per day, five (5) days per week throughout the full calendar year. Juvenile offenders involved in any disciplinary process shall not be denied their right to education and other related services. If security or other related concerns are present that may prohibit a juvenile offender's participation in educational programming, an educational ~~at~~ plan review will be completed and documented in an incident report. If the juvenile offender is eligible for services under the IDEA or Section 504, a Child Study Team will meet to make a determination as to whether or not the behavior is a result of the juvenile offender's handicap. All due process procedures will be followed according to the administrative rules for special education. (4-6-05)()

10. Educational Records and Confidentiality. (4-6-05)

a. Educational records shall be maintained by the contract provider at all times in accordance with FERPA. At a minimum, the following information shall be included in the record: (4-6-05)

- i. Subjects taken; (4-6-05)
- ii. Grades by subject and explanation of the grading system; (4-6-05)
- iii. Units of credit with explanation; (4-6-05)
- iv. Attendance records; and (4-6-05)
- v. Any standardized test scores. (4-6-05)

b. Reports of the juvenile offender's educational progress (report cards) shall be provided ~~in the manner and within the time periods specified in these rules. At a minimum, this requires the documentation of~~

~~monthly progress notes and a written progress report every second month~~ to the education records manager at the juvenile correctional center in Nampa within ten (10) days after the end of the school's grading periods (midterm, semester, trimester, etc.). (4-6-05)(____)

c. Contract providers must ensure that juvenile offender educational files are consistently maintained to ensure compliance with FERPA. (4-6-05)(____)

d. When a juvenile offender is released from department custody or transferred, the permanent education file shall be updated by the department's education records technician. The contract providers will provide final withdrawal grades and credits within twenty-four (24) hours or next working day after the juvenile offender is released from department custody or transferred. The department will provide access to software programs to contract providers for recording courses and grades. When contract providers choose to use the software programs they need not send the department report cards; they need only assure all grades are entered through the software program at the end of each grading period. The contract providers shall send the education records manager at the juvenile correctional center in Nampa an e-mail advising that the final grades have been entered into the software program. Working educational files shall be returned to the juvenile correctional center in Nampa within ten (10) business days of the juvenile offender's release from department custody or transfer. (4-6-05)(____)

301. -- 319. (RESERVED).

320. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

Confidentiality of personal health information of each juvenile offender shall be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the state of Idaho. Compliance with these regulations is the responsibility of the contract provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. (4-6-05)(____)

01. Privacy Officer. The contract provider shall appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. (4-6-05)(____)

02. Separate Records. All juvenile offender medical and health records shall be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. (4-6-05)(____)

321. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender shall be provided with medical, dental, optical, mental health, emergency or any other related health services while in the contract provider's care. Each contract provider shall have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. Health, mental health, and suicide risk screening must be provided within two (2) hours of a juvenile offender's admission to a program. Comprehensive and professional health and mental health assessments must be provided by the contract provider within thirty (30) calendar days of admission, unless these are provided by the department. (4-6-05)(____)

02. Medical Consent. As part of the admission process, the contract provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender's parent, guardian, or committing authority. The consent form shall be filed in the juvenile offender's medical and case files maintained by the contract provider. (4-6-05)(____)

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, reasonable efforts must be made to obtain the consent of the parent or guardian. The signature of only one (1) parent or guardian is sufficient to form consent or authorization. Should the parent or guardian not be available or refuses to sign, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the contract provider from taking action in life and death situations. (4-6-05)

04. Reimbursement Sources. The contract provider shall utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The contract provider shall not seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the contract provider pursuant to its contract with the department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the department's regional R.N. or designee, will be at the expense of the contract provider. (4-6-05)(____)

322. ADMISSION AND ANNUAL HEALTH SERVICES AND TREATMENT RECORDS.

01. Compliance with Child Care Licensing Rules. Admission and annual health services shall be provided to juvenile offenders in accordance with the child care licensing rules of the Idaho Department of Health and Welfare, unless otherwise provided in these rules. (4-6-05)(____)

02. Prior Approval. No prior approval or review from the department's regional R.N. is required for admission and annual health services. Examples of admission and annual health services for which no prior approval or review is required are: (4-6-05)

- a. Admission physical exams, including STD exams and treatment, as well as PAP smears; (4-6-05)
- b. Admission dental exams, including x-rays (no Panorex), and cleanings (no sealants); (4-6-05)
- c. Admission eye exams and glasses, if needed; (4-6-05)
- d. Annual physical exams, including STD exams and treatment, PAP smears; (4-6-05)
- e. Annual dental exams with x-rays (no Panorex), and cleanings; and (4-6-05)
- f. Annual eye exams, if needed, and new glasses only if needed. (4-6-05)

03. Medical Records. Any time a juvenile offender receives treatment under this section or for any similar service, the contract provider shall retain the original medical record regarding treatment and send a copy to the department's regional R.N. immediately to ensure that accurate and current health records are maintained for each juvenile offender. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

324. COMMUNICABLE DISEASES.

01. Policies. (4-6-05)

a. The contract provider shall establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of communicable diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a qualified health professional for juvenile offenders diagnosed with a communicable disease. (4-6-05)(____)

b. The contract provider shall comply with the child care licensing rules of the Idaho Department of Health and Welfare regarding universal precautions. (4-6-05)

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request that he be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test.

(4-6-05)(____)

03. Examinations. Examinations shall be performed on any juvenile offender by medical professionals for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. (4-6-05)(____)

04. Confidentiality. Confidentiality shall be maintained. (4-6-05)

325. PREGNANCY.

01. Individual ~~Treatment~~ Medical Plan. Within the individual ~~treatment~~ medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan shall be based on the orders of the juvenile offender's community obstetric physician and shall include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual ~~treatment~~ medical plan will be sent to the department's regional R.N. (4-6-05)(____)

02. Parenting Classes. Parenting classes shall be an integral part of the individual ~~treatment~~ medical plan for all pregnant female juvenile ~~females~~ offenders. This service should also be offered as a priority to male juvenile ~~males~~ offenders in department custody who are already fathers or whose spouse or girlfriend is expecting a child. (4-6-05)(____)

03. Medicaid Reimbursement. Medical services relating to pregnancy shall be provided by a physician and hospital accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. (4-6-05)(____)

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant shall be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the contract provider's facility. (4-6-05)

326. REFUSAL OF TREATMENT.

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A contract provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record. (4-6-05)(____)

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the contract provider shall issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. If danger to the juvenile offender is not imminent, the contract provider shall contact the clinical services administrator and notify the department's regional R.N. of the juvenile offender's refusal. (4-6-05)(____)

327. USE OF MEDICATIONS.

A program shall have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies shall conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare. If initiating or modifying any medication, the department's regional R.N. must be notified. (4-6-05)(____)

01. Psychotropic Medication. When psychotropic medication has been prescribed to a juvenile offender by a licensed physician, nurse practitioner, or physician's assistant, the contract provider shall notify the department's regional R.N., the juvenile offender's parent or guardian, the juvenile services coordinator, and the juvenile probation officer within three (3) business days. The notice shall include: (4-6-05)(____)

a. The name of the prescribed medication; and (4-6-05)

b. The name and phone number of the doctor, nurse practitioner, or physician's assistant, who can

explain the reason the medication was prescribed and any possible side effects. (4-6-05)

02. Reason for Administering Medication. The contract provider shall have staff available to explain to a parent or guardian, the juvenile services coordinator, and the department's regional R.N., the reason for making a referral to a physician who has prescribed psychotropic medication. The contract provider shall assure that any physician prescribing psychotropic medication is willing to discuss with a parent or guardian and department staff the reason the psychotropic medication was prescribed and the potential side effects of the medication. (4-6-05)

328. SUICIDE PRECAUTIONS.

All contract providers must have a written plan for responding to juvenile offenders who present a risk of suicide. The procedure shall, at a minimum, include a process for determination or assessment of suicidal behavior and risk, a procedure for contacting appropriate health authorities and the department, and a plan of direct supervision of a juvenile offender until a suicide crisis has ended. A suicide risk screening must be completed on every juvenile offender within two (2) hours of admission. (~~4-6-05~~)(____)

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS
05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

DOCKET NO. 05-0102-0701

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) Sections 20-504(2), 20-504(9), 20-504(11), 20-504(14), 20-531(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 17, 2007.

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:

While this chapter was revised and approved during the 2007 legislative session, there are two corrections that should be made, appropriately state that a certificate is issued to juvenile detention centers instead of a license, and to correct an error referencing female juvenile offenders.

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 a representative from the Idaho Association of Counties Juvenile Justice Administrators approved the proposed corrections.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Bishop, Deputy Attorney General, at 334-5100, extension 384.

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 24, 2007.

DATED this 23rd day of August, 2007.

Nancy Bishop
Deputy Attorney General
Idaho Department of Juvenile Corrections
400 N. 10th St., 2nd Floor
P.O. Box 83720
Boise, ID 83720-0285
Phone: 334-5100, ext. 384
Fax: 334-5120

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0102-0701

201. DEPARTMENT PREPARED WRITTEN REPORT OR THEIR AGENTS.

Department representatives shall prepare a written report of each inspection within thirty (30) days following such inspection and provide copies to the appropriate detention center administrator with copies to the governing body and the county attorney. The report will additionally be submitted to the director of the Idaho Department of Juvenile Corrections for consideration and review of the issuance or renewal of a license certificate. ~~(3-30-07)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

224. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual shall contain all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual shall be made available to all staff. (3-30-07)

02. Personal Observation. The detention center shall have written policy and procedures which detention center policy and procedures shall govern the observation of all juvenile offenders and shall, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks shall be logged. More frequent checks should be made of juvenile offenders who are violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation. (3-30-07)

03. Cross Gender Supervision. The detention center shall have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which shall be based on privacy needs and legal standards. Except in emergencies, detention center employees shall not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs shall be observed. ~~(3-30-07)~~(____)

04. Head Counts. The detention center shall have written policy and procedures which shall outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts shall be conducted every twenty-four (24) hours. At least one (1) count shall be conducted each shift and there shall be at least four (4) hours between each count. (3-30-07)

05. Camera Surveillance. Camera surveillance equipment should not be used in place of the personal observation of juvenile offenders. (3-30-07)

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.03 - RULES OF THE CUSTODY REVIEW BOARD

DOCKET NO. 05-0103-0701

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) 20-520(1)(q), 20-532, 20-504(11), 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 17, 2007.

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

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

The purpose of the proposed rulemaking is to formalize the use of Custody Review Board member alternates, clarify the board's power and duties regarding determinations, and add a subsection about reconsiderations as it relates to the board's determinations.

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 proposed changes are either ministerial or to correspond to legislative amendments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Bishop, Deputy Attorney General, at 334-5100, extension 384.

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 24, 2007.

DATED this 23rd day of August, 2007.

Nancy Bishop
Deputy Attorney General
Idaho Department of Juvenile Corrections
400 N. 10th St., 2nd Floor
P.O. Box 83720
Boise, ID 83720-0285
Phone: 334-5100, ext. 384
Fax: 334-5120

THE FOLLOWING IS THE TEXT OF DOCKET NO. 05-0103-0701

000. LEGAL AUTHORITY.

01. Section 20-520(1)(~~g~~), Idaho Code. Pursuant to Section 20-520(1)(~~g~~), Idaho Code, the Idaho Department of Juvenile Corrections shall adopt rules implementing the Custody Review Board and operations and procedures of such board. (~~5-3-03~~)(____)

02. Section 20-532, Idaho Code. Pursuant to Section 20-532, Idaho Code, a juvenile offender committed to a secure facility shall remain until the offender reaches nineteen (19) years of age, is retained for extended custody pursuant to Section 20-520(1)(~~g~~), Idaho Code, or is released or discharged. (~~5-3-03~~)(____)

03. Section 20-504(11), Idaho Code. Pursuant to Section 20-504(11), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Title 67, Chapter 52, Idaho Code, as are deemed necessary or appropriate for the function of the department and the implementation and administration of the Juvenile Corrections Act. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the ~~opinion~~ determination of the Custody Review Board. (~~5-3-03~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Board. The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)

02. Case Management Team. A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)

03. Case Manager. Department staff assigned to directly manage a juvenile's case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider's employee assigned to directly manage a juvenile's case. (5-3-03)

04. Classification. A process for determining the needs and requirements of juveniles for whom commitment has been ordered, and for assigning them to housing units or programs according to their needs and existing resources. (5-3-03)

05. Commit. Commit means to transfer legal custody. (5-3-03)

06. Court. Means any Idaho district court or magistrate's division thereof. (5-3-03)

07. Director. The director of the Idaho Department of Juvenile Corrections. (5-3-03)

08. Department. The Idaho Department of Juvenile Corrections. (5-3-03)

09. Extended Time in Custody. Any period of time a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). (5-3-03)

10. Incident Report. A written document reporting an unusual occurrence or special event such as the discovery of contraband, use of physical force, use of chemical agents, discharge of firearms, and action taken including notation of strip and cavity searches. (5-3-03)

11. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (5-3-03)

12. Juvenile Records. Information concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)

13. Juvenile Services Coordinator (JSC). An employee of the department who is assigned to a particular juvenile as the case worker, ~~certified~~ licensed in social work. (5-3-03)()

14. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner, or operator of a detention center, observation and assessment center, secure facility, residential facility, or other facility having temporary or long-term physical custody of the juvenile offender. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

101. POWERS AND DUTIES.

01. Review. The Custody Review Board is empowered by Sections 20-520(1)(~~g~~) and 20-532, Idaho Code, to review the cases of juveniles in the custody of the department whose cases have been referred to the board according to Section 201 of these rules. (5-3-03)()

02. Board ~~Opinions~~ Determinations. After conducting its review, the Custody Review Board shall advise the department's director whether ~~in their opinion, it has determined that~~ the juvenile before ~~them~~ it needs an extended time in custody to address accountability, community protection, and competency. (5-3-03)()

03. Indeterminate Sentence Remains. The Custody Review Board cannot direct the placement, ~~or~~ treatment ~~or final release decision~~ of a juvenile in the department's custody, and any determination by the board that extended time in custody is needed by a juvenile shall not create a determinate sentence of any kind. (5-3-03)()

04. Release Date for Juveniles. If a juvenile has appeared before the Custody Review Board and the board has concluded that he not be retained in custody, the director shall set a release date for the juvenile, as follows: (4-6-05)

a. If a juvenile appears before the board prior to his nineteenth birthday, but before a reasonable and appropriate release plan has been finalized, the department may retain the juvenile long enough to finalize those plans, but not to exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

b. In all other cases, the department may retain the juvenile long enough to finalize a reasonable and appropriate release plan, but not to exceed forty-five (45) days after the ~~board's opinion~~ director's signed order has been ~~rendered~~ transmitted or delivered to the facility/JSC or any other department appointee. (4-6-05)()

102. STRUCTURE AND COMPOSITION OF THE CUSTODY REVIEW BOARD.

01. Board Members. (5-3-03)

a. The board is composed of four (4) members, each of whom shall be appointed by the director of the department. The director may also appoint two (2) members to serve as alternates on the board, each of whom shall be appointed for a term of two (2) years. (5-3-03)()

b. The director shall select appointees who represent a variety of juvenile justice experiences and victim perspectives, or who are otherwise qualified. (5-3-03)

- 02. Terms of Appointment.** (5-3-03)
- a.** The first term of appointment shall be staggered as follows: (5-3-03)
- i.** An appointee shall serve for a term of one (1) year; (5-3-03)
- ii.** An appointee shall serve for a term of two (2) years; (5-3-03)
- iii.** An appointee shall serve for a term of three (3) years; and (5-3-03)
- iv.** An appointee shall serve for a term of four (4) years. (5-3-03)
- b.** The terms of these initial board members shall be identified in each appointment. (5-3-03)
- c.** Except for the alternates, ~~The~~ director shall fill each succeeding vacancy for terms of four (4) years. Vacancies in the board for unexpired terms shall be by appointment by the director for the remainder of the term. All appointees may be reappointed. (~~5-3-03~~)(____)
- 03. Compensation of Board Members.** Members shall be compensated as provided by Section 59-509(b), Idaho Code. They shall serve without honorarium or compensation but shall be reimbursed for actual and necessary expenses, subject to the limits provided in Section 67-2008, Idaho Code. (5-3-03)
- 04. Removal from Board.** The director may remove any member from the board for neglect of duty required by law, for incompetence, for breaches of confidence or for unprofessional or dishonorable conduct. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

201. REFERRAL OF CASES TO THE BOARD.

The Custody Review Board shall review cases referred to it and will advise the director whether, ~~in its opinion,~~ has determined that extended time in custody is necessary for a juvenile to address competency, accountability and community protection. (~~5-3-03~~)(____)

01. Cases Eligible for Referral. A juvenile's case is eligible for referral to the board in either of the following circumstances: (4-6-05)

a. If the juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the juvenile's case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; or (4-6-05)

b. If the juvenile is past age nineteen (19), has already been retained in the department's custody based on an earlier ~~opinion~~ determination of the Custody Review Board, and one (1) or more members of a juvenile's case management team, the Custody Review Board, or the director of the department believes that an additional case review is in the best interest of the juvenile or others affected. (~~4-6-05~~)(____)

02. Juvenile Has Not Appeared Before the Custody Review Board. Any juvenile who has not appeared before the Custody Review Board in person or by video conference prior to the date of his nineteenth birthday shall be released from custody on that date or as soon thereafter as a reasonable release plan can be determined and finalized. The final release date shall not exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

03. Hearing Schedules. Once a case is referred, the board shall set a date for the review hearing. Unless the board decides otherwise, no case will be heard more often than every six (6) months. (5-3-03)

04. Written Submissions. All written documents and letters to be considered at a particular hearing must be submitted fourteen (14) calendar days in advance of the scheduled hearing in order to ensure that they will be considered. Other documents may be allowed after this deadline by unanimous consent of the board members present. Documents may include: (5-3-03)

- a.** Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)
- b.** Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)
- c.** Written recommendations from each member of the treatment team; (5-3-03)
- d.** Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
- e.** Psychosocial or psychosexual evaluations; (5-3-03)
- f.** Victim's written statement; (5-3-03)
- g.** Juvenile's written statement; (5-3-03)
- h.** Initial classification; (5-3-03)
- i.** Custody level assessment at case review; and (5-3-03)
- j.** Any other pertinent information. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

300. ~~OPINIONS OF BOARD DETERMINATIONS.~~

All ~~opinions determinations of~~ by the Custody Review Board regarding a juvenile shall be prepared in writing and given to the director of the Idaho Department of Juvenile Corrections. (~~5-3-03~~)()

01. Confidentiality. All determinations ~~or opinions~~, including any written documents from any source regarding the juvenile's case, will be held by the Idaho Department of Juvenile Corrections in the juvenile's case management file. (~~5-3-03~~)()

02. ~~Opinion Board's Determination to the Director.~~ The board's written ~~opinion determination~~ concerning a juvenile's release or the juvenile's need to have extended time in custody shall be given to the director no later than thirty (30) calendar days after the date the board receives the last documents or interviews the last witness pertaining to the case. (~~5-3-03~~)()

03. Reconsideration. The board may reconsider its determination in any case only if the vote based on the reconsideration is made before the written determination is given to the director of the Idaho Department of Juvenile Corrections. Only the members who heard the case may discuss or vote on any reconsideration of the determination. ()

a. Any member of the board who was present for and heard the juvenile's case may call for a vote to reconsider the board's determination by making a request through the board chair. ()

b. Any reconsideration may occur by teleconference, in person, by videoconference, or any combination thereof. ()

c. The chair will call for a motion to reconsider, and a vote. ()

d. The determination will then be given to the director in the same manner as is specified in Subsection 300.02. of these rules. ()

034. Indeterminate Sentence Remains. If the board determines that a juvenile needs to stay for an extended time in custody of the department, that ~~opinion determination~~ does not create a determinate sentence of any kind, and the director shall still have the authority to release the juvenile at any later time deemed appropriate. (~~5-3-03~~)()

045. Official Record of Hearing/Review. The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained with records of the Idaho Department of Juvenile Corrections. (5-3-03)

056. Evaluation of Juvenile Cases. Juvenile cases are evaluated on the individual merits of each case. The board's evaluation of a case and a juvenile's need for extended time in custody shall not be based upon any predetermined hearing standard, criteria, or precedent. Factors that may be taken into account by the board include, but are not limited to: (5-3-03)

- a.** Seriousness of the crime; (5-3-03)
- b.** Prior criminal history of the juvenile, as well as prior commitments to the department; (5-3-03)
- c.** Progress or completion of program, treatment plan, accountability; (5-3-03)
- d.** Institutional history to include conformance to established rules, involvement in programs and overall behavior; (5-3-03)
- e.** Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen; and (5-3-03)
- f.** Information or reports regarding physical, psychological, or other conditions. (5-3-03)

301. -- 399. (RESERVED).

400. VICTIMS.

It is the policy of the Idaho Department of Juvenile Corrections and the Custody Review Board to respect the rights of victims of crime in Idaho, pursuant to the Idaho Constitution and statute. When a juvenile's case has been referred for review, the department shall be responsible for providing the board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. (5-3-03)

01. Notice to Victims. The board will notify identified victims of a juvenile's crime that a custody review hearing has been scheduled. These victims will also be notified of their right to submit written statements or information and their right to provide testimony. After the review proceeding, victims shall be notified of the board's determination regarding the custody of the juvenile. (5-3-03)

a. Notices of rights, hearings, the board's final ~~opinion determinations~~, and any anticipated release documents will be sent to the victim of record at the last known address. It is the responsibility of the victim to provide any change of address. (~~5-3-03~~)()

b. Victims may request that they not be notified or contacted. (5-3-03)

02. Victim Testimony. A victim may attend any and all custody review hearings pertinent to their case and to provide testimony. The victim may be allowed to testify before the board members during a hearing session but at a time separate from the actual hearing with the juvenile present. All testimony of a victim shall remain confidential. (5-3-03)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.01 - RULES GOVERNING ELECTRICAL INSPECTION TAGS

DOCKET NO. 07-0101-0701

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 54-1005 and 54-1006, 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 17, 2007.

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 requirements for Electrical Inspection Tags need to be changed to facilitate the use of a new software system which will allow customers to purchase permits via the Internet. The current references to multi-part forms are obsolete. All references to the Electrical Bureau need to be changed to reflect the Division of Building Safety and its current address. Also, options other than mail must be allowed for specified deliveries. The proposed rules change the requirements to allow for copies of forms to be used in lieu of specified pages of multi-part forms, delivery of permit copies through alternative means, and the transacting of business via the Internet.

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 changes in the rule simply serve to facilitate the implementation of a new software system at DBS making the current system of processing electrical permit forms obsolete. The amendments will reduce the paperwork required of applicants for permits and increase the efficiency of DBS' delivery of customer services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0101-0701

011. ELECTRICAL INSPECTION TAGS.

Electrical inspection tags as authorized by Section 54-1005, Idaho Code, shall ~~be printed and made available by the Electrical Bureau. Each tag shall~~ bear a Serial Number ~~and shall be in five parts, to be designated No. 1, No. 2, No. 3, No. 4, and No. 5, for all electrical contractor inspection tags or shall be in four parts, to be designated No. 1, No. 2, No. 3, and No. 4, for all property owner inspection tags.~~ (1-14-87)()

012. ELECTRICAL CONTRACTORS' INSPECTION TAGS.

Electrical contractors' inspection tags shall be furnished by the ~~Electrical Bureau~~ Division of Building Safety to licensed electrical contractors upon request. The serial numbers of such tags shall be registered in the name of the electrical contractor to whom they are issued and they shall not be transferable. Electrical inspection tags issued to an electrical contractor shall be used only for electrical installations made by said electrical contractor and for which said electrical contractor assumes full responsibility. (7-1-97)()

01. Completion of Electrical Inspection Tag. For each electrical installation made by an electrical contractor and coming under the provisions of Section 54-1001, Idaho Code, said contractor or his authorized representative shall complete an electrical inspection tag application, issued by the ~~Electrical Bureau~~ Division of Building Safety, giving all pertinent information. The name of the electrical contractor shall be stated and the tag shall be signed by the electrical contractor or his authorized agent. ~~All five copies shall be legible.~~ (7-1-97)()

02. Posting of Electrical Inspection Tag. Before work is commenced, the electrical contractor or his authorized representative shall place ~~part No. 5~~ a copy of the electrical inspection tag at the location of the service switch and mail or deliver ~~part No. 4~~ a copy to the power supplier. ~~Parts No. 1 & No. 2~~ An application, together with the proper inspection fee as herein provided, shall be received by the ~~Electrical Bureau~~ Division of Building Safety within seven (7) calendar days from the time the electrical work is started. Where the total cost of installation is unknown, the minimum inspection fee as listed in IDAPA 07.01.02, "Rules Governing Fees For Electrical Inspections," Subsection 011.06 of the fee schedule shall accompany the tag and arrangements shall be made, in writing, with the ~~Electrical Bureau~~ Division of Building Safety or its authorized agent for payment of the balance of the fee. In all cases, payment of the total inspection fee shall be made prior to completion of the installation. (4-5-00)()

a. The ~~Electrical Bureau~~ Division of Building Safety may refuse to extend credit to any electrical contractor for late payment or non-payment of any electrical inspection fees when due. In such instance, the contractor shall return all unused permits to the ~~Electrical Bureau~~ Division of Building Safety forthwith. No further permits will be issued to the contractor unless prepaid in cash or cash equivalent. Such contractor will not be allowed to purchase further permits unless and until all such unused permits have been returned to the ~~Electrical Bureau~~ Division of Building Safety, Boise Office Meridian, and all outstanding fees due have been paid in full. (7-1-97)()

b. Failure to post ~~Part 5~~ a copy of the electrical inspection tag at the required location, or failure to submit ~~parts No. 1 and No. 2~~ an application of such tag and the proper inspection fee to the ~~Electrical Bureau~~ Division of Building Safety within seven (7) calendar days from the time the electrical installation work is commenced will result in the imposition of a double inspection fee. (7-1-97)()

c. No electrical inspections shall be provided without the Division of Building Safety receiving an application for a tag along with the proper fee. ()

013. ELECTRICAL LICENSING EXEMPTION FOR ~~REAL PROPERTY HOME OWNERS~~ AND MAINTENANCE ELECTRICIANS; INSPECTION TAG REQUIREMENTS.

The licensing provisions of Title 54, Chapter 10, Idaho Code, and IDAPA 07.01.03, "Rules Governing Electrical Licensing," do not apply to the following pursuant to Section 54-1016, Idaho Code: (7-1-98)

01. ~~Personal Property Home Owner~~ Installations. ~~Persons~~ Home owners making ~~electrical~~ installations on their own ~~property~~ primary residence, secondary residence, and buildings associated with these residences that are not used for commercial purposes. (7-1-98)()

02. Maintenance Electricians. Maintenance electricians employed full-time only to service, maintain, assemble, or repair EXISTING electrical installations located on their employers' premises. (2-23-94)

03. Procedures for Inspection Tags for Exempt Property Home Owners. Persons exempt from licensing pursuant to Subsection 013.01 of this rule must still secure all electrical inspection tags required by Section 54-1005, Idaho Code, before making any electrical installation. No electrical wiring or equipment may be concealed in any manner from access or sight until the work has been inspected and approved for cover by the electrical inspector. A final inspection shall be made upon the completion of all electrical work. The procedure for obtaining inspection tags follows: (7-1-98)(____)

a. Any exempt person shall obtain an application form from the ~~Electrical Bureau~~ Division of Building Safety, either at its ~~Boise, Idaho, Meridian~~ main office or at a designated location ~~in each county~~. The application form shall be properly completed, signed, and mailed forwarded to the ~~Electrical Bureau, P.O. Box 83720, Boise, Idaho 83720-0028~~ Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, with the proper inspection fee as provided for in these rules. (7-1-98)(____)

b. Upon receipt of the properly completed application together with the proper inspection fee, the ~~Electrical Bureau~~ Division of Building Safety shall immediately issue an electrical inspection tag for the electrical installation designated in the application. (2-23-94)(____)

c. ~~Parts No. 1 and 4~~ A copy of the an electrical inspection tag shall be retained by the ~~Electrical Bureau~~ Division of Building Safety. ~~Part No. 2~~ A copy of an electrical inspection tag shall be mailed forwarded to the applicant and shall be placed on the location of the service, and ~~Part No. 4~~ a copy of an electrical inspection tag shall be forwarded to the state electrical inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (2-23-94)(____)

d. ~~Part No. 3~~ A copy of an electrical inspection tag shall be mailed forwarded or delivered to the power supplier by the Division of Building Safety. (2-23-94)(____)

014. ELECTRICAL INSPECTION TAG REQUIREMENTS FOR INDUSTRIAL ACCOUNTS.

~~Property owners,~~ Companies, firms, associations, or corporations who use employees to make electrical installations coming under the provisions of Section 54-1001, Idaho Code, on their own premises, must establish an Industrial Account with the ~~Electrical Bureau~~ Division of Building Safety and secure electrical inspection tags by making application to the ~~Electrical Bureau~~ Division of Building Safety. Employees performing non-maintenance electrical installations on an Industrial Account must be licensed electrical journeymen as provided by Section 54-1002(2). One (1) properly licensed employee shall be designated the supervising journeyman for the Industrial Account with the ~~Electrical Bureau~~ Division of Building Safety. (7-1-98)(____)

01. Application Forms. The application form shall be properly completed, signed by the property owner or agent of the company, firm, association, or corporation, and mailed forwarded to the ~~Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028~~ Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, with the proper inspection fee as hereinafter provided. (7-1-98)(____)

02. Posting of Electrical Inspection Tag. Upon receipt of a properly completed application from a property owner, company, firm, association, or corporation for an electrical inspection tag, together with the proper inspection fee, the ~~Electrical Bureau~~ Division of Building Safety shall immediately issue an electrical inspection tag for the electrical installations designated in the application. ~~Parts No. 1 and No. 4~~ A copy of an electrical inspection tag shall be retained by the ~~Electrical Bureau~~ Division of Building Safety. ~~Part No. 2 of the 4-part~~ A copy of an electrical inspection tag shall be mailed forwarded to the applicant and shall be placed at the location of the service switch. ~~Part No. 3~~ A copy of an electrical inspection tag shall be mailed forwarded or delivered to the power supplier, and ~~Part No. 4~~ a copy shall be forwarded to the State Electrical Inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (1-14-87)(____)

03. Power Supply Company. In the event the power supplier deems it necessary to energize an electrical installation without delay to preserve life or property, the power supply company may accept the application properly completed and signed, with the proper inspection fee attached, in lieu of the electrical inspection

tag required by Section 54-1004, Idaho Code, provided the power supply company or its authorized agent shall assume the responsibility of ~~mailing forwarding~~ the application and inspection fee to the ~~Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028~~ Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642. The ~~Electrical Bureau~~ Division of Building Safety shall, upon request, furnish application forms and self-addressed, ~~postage-paid~~ envelopes to power supply companies operating within the state of Idaho. (7-1-98)(____)

015. TEMPORARIES.

Temporaries for construction may be energized by power suppliers upon receipt of a ~~contractor's~~ copy of an inspection tag, an owner application as provided in Subsection 07.01.01.013.03, or a Temporary For Construction label purchased from the ~~Electrical Bureau by a building contractor~~ Division of Building Safety. (2-23-94)(____)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.02 - RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS
DOCKET NO. 07-0102-0701 (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 54-1001D, 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 17, 2007.

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 changes in fees for electrical permits simplify the calculation of residential permit fees by basing fees on the square footage of the residence and associated outbuildings constructed at one time. Permit fees for non-residential installations increase in cost, but bring them into conformance with plumbing and HVAC permit fees which decrease substantially in cost versus their current costs. By adopting a common fee basis for electrical, plumbing, and HVAC permits, the programming and implementation costs associated with the new software system are minimized. The structure is also more easily understood by staff and customers alike.

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

This rulemaking increases electrical permit fees and provides for a new system to calculate these permit 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:

The Division of Building Safety anticipates a net increase in permit fee revenue attributable to an increase in fees for non-residential installations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule is the result of an effort on the part of the Division to standardize fees in anticipation of the installation of a new licensing and permitting software system. Industry participants have voiced enthusiastic support for the square footage-based fee schedule for residential installations, and the Division believes the increase in commercial/industrial installation permit fees along with decreases in HVAC and plumbing fees for similar installations addresses equity questions that have been brought forward.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0102-0701

011. FEES FOR ELECTRICAL INSPECTIONS.

Electrical inspection fees are to cover the cost of electrical inspection as provided by Section 54-1005, Idaho Code; any person, partnership, company, firm, association, or corporation making an electrical installation coming under the provisions of Section 54-1001, Idaho Code, shall pay to the Electrical Bureau an inspection fee as provided in the following schedule. (1-14-87)

01. Temporary Construction Services. To be installed for construction purposes only, for a period not to exceed one (1) year: (3-18-99)

a. Two hundred (200) amp or less, one (1) location: ~~forty sixty-five~~ dollars (\$~~4065~~). ~~(3-18-99)~~()

b. All others shall be calculated using Subsection 011.06, Other Installations Including Industrial and Commercial. (3-18-99)

02. New Residential -- Single Family Dwelling. (Includes ~~everything contained within the residential structure and attached garage wired at the same time~~ all buildings with wiring being constructed on each property.)

New Residential - Single-Family Dwelling	
Up to 200 Amp Service 1,500 Square feet of construction	- \$ 1230 *
201 to 400 Amp Service 1,501 to 2,500 Square feet of construction	- \$ 240195 *
2,501 to 3,500 Square feet of construction	- \$ 260 *
3,501 to 4,500 Square feet of construction	- \$ 325 *
Over 400 Amp Service 4,500 Square feet of construction	Use Subsection 011.06, Other Installations Including Industrial and Commercial
* Fee is to include maximum of <u>two (2) inspections up to 1,500 square feet</u> , three (3) inspections <u>1,501 to 2,500 square feet</u> , four (4) inspections <u>2,501 to 3,500 square feet</u> , and five (5) inspections <u>3,501 to 4,500 square feet</u> . Additional inspections charged at requested electrical inspection rate of forty sixty-five dollars (\$ 4065) per hour.	
Other residential structures (unattached): see Subsection 011.06, Other Installations Including Industrial and Commercial.	
New Residential - Multi-Family Dwellings	
Duplex Apartment	- \$ 260
Three (3) or more multi-family units	- \$ 1230 per Building plus \$ 605 per Unit

~~(3-18-99)~~()

a. Existing residential: ~~forty sixty-five~~ dollars (\$~~4065~~) plus ten dollars (\$10) for each additional branch circuit up to the maximum of the corresponding square footage of the residential building. ~~(3-18-99)~~()

b. Residential spas, hot tubs, hydro massage tubs, swimming pools: ~~forty~~ sixty-five dollars (\$~~40~~65) ~~basic fee plus forty dollars (\$40) grounding grid where applicable for each trip to inspect.~~ (Other than residential, use Subsection 011.06, Other Installations Including Industrial and Commercial.) ~~(3-18-99)~~()

03. Residential Electric Space Heating and/or Air Conditioning. When not part of a new residential construction permit, or heat ventilating air conditioning permit and with no additional wiring: ~~forty~~ sixty-five dollars (\$~~40~~65). ~~(3-18-99)~~()

04. Domestic Water Pumps. See Subsection 011.07 -- Pumps (Water, Domestic Water, Irrigation, Sewage.) ~~(3-18-99)~~()

05. Mobile/Manufactured Homes. ~~Fifty~~ Sixty-five dollars (\$~~50~~65) basic fee plus ten dollars (\$10) for each additional circuit. ~~(3-18-99)~~()

a. Mobile home and RV parks for distribution wiring including pedestal, service conductors and lot supply to individual units come under Subsection 011.06, Other Installations Including Industrial and Commercial. ~~(3-18-99)~~()

06. Other Installations Including Industrial and Commercial. The inspection fees listed in this section shall apply to any and all electrical installations not specifically mentioned elsewhere in this schedule. The electrical cost shall be the cost to the owner of all labor charges and all other costs that are incurred in order to complete the installation of any and all electrical wiring and equipment installed as part of the electrical system, factory assembled industrial machinery to be operated by electrical energy shall not be included in calculating these fees. ~~(3-18-99)~~()

a. Wiring cost not exceeding ~~two~~ ten thousand dollars (\$~~210,000~~210,000): ~~forty~~ sixty dollars (\$~~40~~60) plus two ~~and one-half~~ percent (2-~~5~~5%) of total wiring cost. ~~(3-18-99)~~()

b. Wiring cost over ~~two~~ ten thousand dollars (\$~~210,000~~210,000) but not exceeding ~~ten~~ one hundred thousand dollars (\$~~100,000~~100,000): ~~one~~ two hundred ~~sixty~~ sixty dollars (\$~~102~~160) plus one percent (1%) of ~~total~~ wiring cost in excess of ~~ten~~ thousand dollars (\$~~10,000~~10,000). ~~(3-18-99)~~()

c. Wiring cost over ~~ten~~ one hundred thousand dollars (\$~~100,000~~100,000): ~~one~~ thousand one hundred ~~eighty~~ sixty dollars (\$~~180~~1,160) plus one-half of one percent (.5%) of the portion of wiring costs exceeding ~~ten~~ one hundred thousand dollars (\$~~100,000~~100,000). ~~(3-18-99)~~()

d. All fees calculated under this schedule must be calculated on the total wiring cost of the job, and this figure must be shown on the permit. The inspection fees listed in this Subsection shall apply to any and all electrical installations not specifically mentioned elsewhere in this schedule. The wiring cost shall be the cost to the owner of all labor charges and all wiring materials and equipment installed as part of the wiring system. When labor is performed by the owner, such labor cost shall be based upon the market value of said labor and used- or reused materials shall be based at fifty percent (50%) of the column 3 pricing as published by Trade Service Publication or National Price Service Pricing or the actual cost, whichever is greater. For all owner-supplied, factory assembled electrical infrastructural equipment to be installed, the inspection will be based on one-half of one percent (.5%) of total cost of the equipment OR an hourly rate of ~~eighty~~ one hundred thirty dollars (\$~~81~~130) for the first hour of each inspection and ~~forty~~ sixty-five dollars (\$~~40~~65) for each subsequent hour. Factory assembled machinery to be operated by electrical energy shall not be included when calculating these fees. ~~(3-18-99)~~()

e. Small work not exceeding two hundred dollars (\$200) in cost and not involving a change in service connections: ten dollars (\$10). ~~(3-30-06)~~()

07. Pumps (Water, Domestic Water, Irrigation, Sewage) -- Each Motor.

To 25 HP - \$ 40 <u>65</u>
26 to 200 HP - \$ 60 <u>95</u>

Over 200 HP - \$8130
Phase inverters and roto phase equipment use Subsection 011.06, in addition to the pump motor fee.

~~(3-18-99)~~(____)

08. Electrically-Driven Irrigation Machine. Center Pivot: ~~forty~~ sixty-five dollars (~~\$4065~~) plus ten dollars (\$10) per tower or drive motor. Other types: ~~forty~~ sixty-five dollars (~~\$4065~~) plus ten dollars (\$10) per motor. (Note: No additional fee required for underground feeder). ~~(3-18-99)~~(____)

09. Electric Signs and Outline Lighting. Electric signs: ~~forty~~ sixty-five dollars (~~\$4065~~) per sign; Outline Lighting: ~~forty~~ sixty-five dollars (~~\$4065~~) per each occupancy. ~~(3-18-99)~~(____)

10. Requested Inspections. A base fee of ~~forty~~ sixty-five dollars (~~\$4065~~) plus an additional ~~twenty~~ sixty-five dollars (~~\$2065~~) for each ~~one-half~~ (1/2) hour, or portion thereof, in excess of one (1) hour including travel time. Out-of-state travel ~~subject to additional~~ expenses shall be paid by the requesting party. ~~(3-30-06)~~(____)

11. Additional Fees and Reinspection Fees. A base fee of ~~forty~~ sixty-five dollars (~~\$4065~~) plus an additional ~~twenty~~ sixty-five dollars (~~\$2065~~) for each additional ~~one-half~~ (1/2) hour, or portion thereof in excess of one (1) hour including travel time, shall also be paid before approval of the installation if the following services are necessary: ~~(3-30-06)~~(____)

a. Trips to inspect when the submitter of the permit had given notice to the inspector that the work is ready for inspection when it was not, or if the submitter has not clearly given the location of the installation either by directions or maps, or if the inspector cannot gain access to make the inspection. (1-14-87)

b. Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. (1-14-87)

c. Each trip necessary to remove a red tag from the jobsite. (1-14-87)

d. When corrections have not been made in the prescribed time, unless an extension has been requested and granted. (1-14-87)

e. No permit -- failure to post or send permit and required fee in the prescribed time will, at the discretion of the Division, result in the assessment of a double fee. (3-18-99)

12. Plan Check Fee. ~~Forty~~ Sixty-five dollars (~~\$4065~~) minimum for one (1) hour or less. Over one (1) hour: ~~forty~~ sixty-five dollars (~~\$4065~~) plus ~~twenty~~ sixty-five dollars (~~\$2065~~) for each ~~one-half~~ (1/2) hour or portion thereof in excess of one (1) hour. ~~(3-18-99)~~(____)

13. Fees for Temporary Amusement/Industry Electrical Inspections. Each time a ride, concession, or generator is set up: ~~forty~~ sixty-five dollars (~~\$4065~~) base fee plus ten dollars (\$10) for each ride, concession, or generator. ~~(3-18-99)~~(____)

14. Expiration of Permits. Every permit issued by the Electrical Bureau shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of such permit or if the work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty (180) days. A permit may be renewed for an additional year upon receipt of Bureau approval and ~~forty~~ sixty-five dollars (~~\$4065~~) renewal fee. ~~(3-18-99)~~(____)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-0701

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 54-1006(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 17, 2007.

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 Division of Building Safety and the electrical industry recognized a need to raise the minimum qualification level of qualifiers for electrical contracting licenses. This proposed rule is the result of extensive negotiations and hearings conducted over the past year as part of a negotiated rulemaking. The proposed rule changes require that the owner or qualified employee of an applicant for an electrical contractor license be licensed as a master electrician. Previously, only a journeyman electrician license was required. The proposed changes are effective July 1, 2008 and provide an exemption for existing contractors until a new supervising electrician is designated.

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 conducted. The Notice of Negotiated Rulemaking was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, page 85.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0103-0701

015. ELECTRICAL CONTRACTOR.

01. Qualifications for Electrical Contractor. (4-7-91)

a. On and after July 1, 2008, ~~Except~~ as hereinafter provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for an electrical contractor license upon the ~~condition that such~~ following requirements: ()

i. ~~Applicant shall have at least one (1) full-time employee who holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours.~~ Licensed electrical contractors who are current and active prior to July 1, 2008, shall not be required to have a master electrician as the supervising electrician until a new supervising electrician is designated. A master electrician license will be required for a new supervising electrician designated after July 1, 2008. ()

ii. The master electrician shall be designated the supervising electrician and shall be available during working hours to carry out the duties of supervising, as set forth herein and who will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. ()

iii. An individual electrical contractor may act as his own supervising ~~journeyman~~ master electrician upon the condition that he holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours. The supervising journeyman electrician shall be available during working hours to carry out the duties of supervising journeymen, as set forth herein. (4-5-00)()

iv. Applicant must pass a contractor examination administered by the Bureau or its designee. Any applicant which purports to be a non-individual (i.e., corporation, partnership, company, firm, or association), must designate in writing an individual to represent the partnership, company, etc., for examination purposes. Any such designee shall be a full-time supervisory employee and may not represent any other applicant for an electrical contractor's license. ()

v. Applicant shall provide proof of liability insurance to the Bureau in the amount of three hundred thousand dollars (\$300,000) from an insurance company licensed to do business in the state of Idaho. The liability insurance shall be in effect for the duration of the applicant's contractor licensing period. ()

vi. Applicant shall provide to the Bureau proof of Idaho's worker's compensation insurance unless specifically exempt from Idaho law. Bureau will provide written confirmation of exemption status. ()

b. ~~Those duties include assuring that all electrical work substantially complies with the National Electrical Code and other electrical installation laws and rules of the state, and that proper electrical safety procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau; and a~~ Any person designated under Subsection 015.01.a., and the contractor he represents, shall each notify the Bureau in writing if the supervising ~~journeyman~~ master's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the supervising ~~journeyman~~ master's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising ~~journeyman~~ master is qualified by the Bureau. (7-27-94)()

02. Required Signatures on Application. An application for an electrical contractor license shall be signed by the applicant or by the official representative of the partnership, company, firm, association, or corporation making the application. The application shall be countersigned by the supervising ~~journeyman~~ master electrician. (4-1-91)()

03. Electrical Contracting Work Defined. An electrical contractor license issued by the Division of Building Safety must be obtained prior to acting or attempting to act as an electrical contractor in Idaho. (4-5-00)

a. Electrical contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (4-5-00)

b. Any person or entity providing or offering to provide electrical contracting services, including, but not limited to, submitting a bid shall be considered as acting or attempting to act as an electrical contractor and shall be required to be licensed. (4-5-00)

c. Any person or entity, not otherwise exempt, who performs or offers to perform electrical contracting work, is acting as an electrical contractor, whether or not any compensation is received. (4-5-00)

04. Previous Revocation. Any applicant for an electrical contractor license who has previously had his electrical contractor license revoked for cause, as provided by Section 54-1009, Idaho Code, shall be considered as unfit and unqualified to receive a new electrical contractor license so long as such cause for revocation is continuing and of such nature that correction can be made by the applicant. (1-14-87)

05. Reviving an Expired License. Any applicant for an electrical contractor license who has allowed his license to expire and seeks to revive it under the provisions of Section 54-1013, Idaho Code, may be denied a license as unfit and unqualified if, while operating under the license prior to expiration, he violates any of the laws and/or rules applicable to electrical contractors. (4-1-91)

06. Qualification and Duties for Supervising Journeyman or Master. ()

a. A journeyman master electrician shall not be considered as qualified to countersign an electrical contractor license application as the supervising journeyman master, nor shall said application be approved if he does countersign said application as the supervising journeyman master, if said journeyman master has had his Idaho Electrical Contractor license revoked for cause under Section 54-1009, Idaho Code. ()

b. A supervising journeyman master shall not countersign for more than one (1) contractor. ()

c. A journeyman who is a full time employee of a company, corporation, firm or association with an industrial account may sign as supervising journeyman for that industrial account in addition to signing as supervising journeyman for his own contractor's license so long as the journeyman is listed as the owner and complies with the provisions of Subsections 015.01.a. and 015.01.b. (7-1-97)

d. Duties include: assuring that all electrical work substantially complies with the National Electrical Code and other electrical installation laws and rules of the state, and that proper electrical safety procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau. ()

07. Failure to Correct Defects in Electrical Installations. If a journeyman master countersigns an electrical contractor license application pursuant to Subsection 015.03 and thereafter willfully fails to correct defects in electrical installations he made or supervised, and such defects are within his power to correct and are not the fault of the contractor, then the Electrical Bureau shall have the power to suspend or revoke said journeyman master's license pursuant to Section 54-1009, Idaho Code. (1-14-87)()

08. Overcharging of Fees. It shall be grounds for suspension or revocation of an electrical contractor license if he charges and collects from the property owner an electrical permit or inspection fee which is higher than the fee actually in effect at the time of such charging and collection, pursuant to the current Electrical Laws and Rules of the Division of Building Safety, Electrical Bureau, and the fee remitted by the contractor to the Bureau is less than the fee actually charged and collected by him. (4-6-83)

09. ~~Electrical Termination of Supervising Master or Contractor's Examination Designee.~~ (9-1-94)()

~~a. Each electrical contractor's license applicant must pass a contractor's examination to be administered by the Bureau or its designee. Any applicant which purports to be a non-individual (i.e., corporation, partnership, company, firm, or association), must designate in writing an individual to represent the partnership, company, etc., for examination purposes. Any such designee shall be a full-time supervisory employee and may not represent any other applicant for an electrical contractor's license. Any person designated under Subsection 015.09.a., and the contractor he represents, shall each notify the Bureau in writing if the supervising master's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the supervising master's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising journeyman is qualified by the Bureau.~~

~~(9-1-94)()~~

b. Any person designated under Subsection 015.09.a., and the contractor he represents, shall each notify the Bureau in writing if the designee's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the designee's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another duly qualified designee passes the electrical contractor's examination on behalf of the contractor.

(9-1-94)

~~c. Passage of the contractor's examination shall only be required for new electrical contractor license applications submitted after the effective date of this rule, September 1, 1994, and shall not apply to license renewal or revival under Section 54-1013, Idaho Code.~~

~~(9-1-94)~~

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-0701

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 54-1006(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 17, 2007.

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 Division of Building Safety and the electrical industry recognized that the heightened rules for electrical contractors (requiring a master electrician license), should not apply to specialty contractor licenses. This proposed rule is the result of extensive negotiations and hearings conducted over the past year as part of a negotiated rulemaking. The proposed rule changes clarify that the owner or qualified employee of an applicant for an electrical specialty contractor license need not be licensed as a master electrician. Only a supervising specialty journeyman license is required.

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 conducted. The Notice of Negotiated Rulemaking was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, page 85.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 16th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0701

017. SPECIALTY CONTRACTOR LICENSE.

01. Qualifications for Specialty Electrical Contractor. Except as herein provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for a specialty electrical contractor license upon the condition that such applicant will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. The supervising specialty journeyman electrician shall be available during working hours to carry out the duties of supervising specialty journeyman, as set forth herein. In addition, the applicant shall meet or have at least one (1) full-time employee who meets one (1) of the following criteria: (3-30-01)

a. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has held a valid specialty journeyman electrician's license for a period of not less than two (2) years, during which time he was employed as a specialty journeyman electrician for a minimum of four thousand (4,000) hours; (3-30-01)

b. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has at least four (4) years of experience in the specialty electrical category with a minimum of two (2) years practical experience in planning, laying out, and supervising electrical installations in this specialty category. (3-30-01)

02. Modification to Qualifications. Applicants for specialty contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors and countersigning ~~journeyman~~ master, as set forth in the current Electrical Laws and Rules with the exception that an electrical contractor requires a master electrician to countersign as a supervising master whereas a supervising specialty journeyman for a specialty electrical contractor must meet the requirements of Subsection 017.01. (~~3-30-01~~)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

DOCKET NO. 07-0106-0701

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 54-1001, 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 17, 2007.

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 Electrical Board adopts the latest versions of the National Electrical Code as they become available. Such timely adoption assures the best protection for Idaho citizens. The proposed rule changes adopt the 2008 National Electrical Code, with amendments reflecting the best judgment of the 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 of time limitations and the need to implement some significant safety measures as soon as possible. DBS and Electrical Board members have discussed this issue at length with representatives of the Building Contractor Association, local jurisdictions, electrical contractors, electricians, and specialty contractors affected by the implementation of the new code. DBS and the Electrical Board feel that the rule being proposed is a consensus document and reflects a middle of the road approach enhancing safety without adding significant cost to consumers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0106-0701

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, 2005~~8~~ EDITION.

01. ~~The National Electrical Code, 2005 Edition Documents.~~ Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2005~~8~~ Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2005~~8~~, with the exception of the following: ~~(4-11-06)~~(____)

a. Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (5-3-03)

b. Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

~~c.~~ ~~Compliance with Article 210.12(B) shall not apply to the fire/smoke alarm branch circuit outlet.~~ (5-3-03)

~~d.~~ Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device(s) (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder(s) accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

d. Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. (____)

i. Definition. Arc-Fault Circuit-Interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected. (____)

ii. Dwelling Unit Bedrooms. All one hundred twenty-volt (120), single phase, fifteen- and twenty-ampere (15 and 20) branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. (____)

e. Compliance with Article 680.26 Bonding. (____)

i. Performance. The bonding required by this section shall be installed to eliminate voltage gradients in the pool area as prescribed. FPN: This section does not require that the eight (8) AWG or larger solid copper bonding conductor be extended or attached to any remote panelboard, service equipment, or any electrode. (____)

ii. Bonded Parts. The parts specified in 680.26(B)(1) through (B)(5) shall be bonded together. (____)

(1) Metallic Structural Components. All metallic parts of the pool structure, including the reinforcing metal of the pool shell, coping stones, and deck, shall be bonded. The usual steel tie wires shall be considered suitable for bonding the reinforcing steel together, and welding or special clamping shall not be required. These tie wires shall be made tight. If reinforcing steel is effectively insulated by an encapsulating nonconductive compound at the time of manufacture and installation, it shall not be required to be bonded. Where reinforcing steel is encapsulated with a nonconductive compound, provisions shall be made for an alternate means to eliminate voltage gradients that would

otherwise be provided by unencapsulated, bonded reinforcing steel. ()

(2) Underwater Lighting. All forming shells and mounting brackets of no-niche luminaries (fixtures) shall be bonded unless a listed low-voltage lighting system with nonmetallic forming shells not requiring bonding is used. ()

(3) Metal Fittings. All metal fittings within or attached to the pool structure shall be bonded. Isolated parts that are not over one hundred (100) mm (four (4) inches) in any dimension and do not penetrate into the pool structure more than twenty-five (25) mm (one (1) inch) shall not require bonding. ()

(4) Electrical Equipment. Metal parts of electrical equipment associated with the pool water circulating system, including pump motors and metal parts of equipment associated with pool covers, including electric motors, shall be bonded. Metal parts of listed equipment incorporating an approved system of double insulation and providing a means for grounding internal nonaccessible, non-current-carrying metal parts shall not be bonded. Where a double-insulated water-pump motor is installed under the provisions of this rule, a solid eight (8) AWG copper conductor that is of sufficient length to make a bonding connection to a replacement motor shall be extended from the bonding grid to an accessible point in the motor vicinity. Where there is no connection between the swimming pool bonding grid and the equipment grounding system for the premises, this bonding conductor shall be connected to the equipment grounding conductor of the motor circuit. ()

(5) Metal Wiring Methods and Equipment. Metal-sheathed cables and raceways, metal piping, and all fixed metal parts except those separated from the pool by a permanent barrier shall be bonded that are within the following distances of the pool: ()

(a) Within one and five tenths (1.5) meters (five (5) feet) horizontally of the inside walls of the pool. ()

(b) Within three and seven tenths (3.7) meters (twelve (12) feet) measured vertically above the maximum water level of the pool, or any observation stands, towers, or platforms, or any diving structures. ()

iii. Common Bonding Grid. The parts specified in 680.26B shall be connected to a common bonding grid with a solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. Connection shall be made by exothermic welding or by pressure connectors or clamps that are labeled as being suitable for the purpose and are of stainless steel, brass, copper, or copper alloy. The common bonding grid shall be permitted to be any of the following: ()

(1) The structural reinforcing steel of a concrete pool where the reinforcing rods are bonded together by the usual steel tie wires or the equivalent. ()

(2) The wall of a bolted or welded metal pool. ()

(3) A solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. ()

(4) Rigid metal conduit or intermediate metal conduit of brass or other identified corrosion-resistant metal conduit. ()

iv. Connections. Where structural reinforcing steel or the walls of bolted or welded metal pool structures are used as a common bonding grid for nonelectrical parts, the connections shall be made in accordance with 250.8. ()

v. Pool Water Heaters. For pool water heaters rated at more than fifty (50) amperes that have specific instructions regarding bonding and grounding, only those parts designated to be bonded shall be bonded, and only those parts designated to be grounded shall be grounded. ()

02. ~~The National Electrical Code, 2005 Edition, Availability.~~ This document is available at the office of the Division of Building Safety ~~offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814.~~ (4-11-06)()

IDAPA 07- DIVISION OF BUILDING SAFETY
07.01.07 - RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS
DOCKET NO. 07-0107-0701
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 54-1006(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 17, 2007.

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:

Continuing education is required of electricians for renewal of their licenses. The current policy for approval of sponsors, courses, and instructors has been reviewed and approved by the Idaho State Electrical Board, but those requirements are not defined by administrative rule. This proposal would place those requirements in administrative rule. The proposed rule changes define the requirements for electrical continuing education sponsors, courses, and instructors.

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 Board has become aware of problems in some of the current programs and recognized a need to clarify and move current administrative policy into rule to facilitate corrective action by the administrator.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0107-0701

012. COURSE APPROVAL REQUIREMENTS.

Continuing education courses for electricians must cover technical aspects of the electrical trade. Courses related to management, supervision, business practices, personal computer skills, or first aid will not be approved. Courses will be approved as either code update or industry related based on the criteria as defined in this section. ()

01. General Course Requirements. ()

a. Courses must be at least four (4) hours in length. ()

b. Courses must be taught by an instructor approved by the Electrical Bureau. ()

c. The presentation should be delivered orally with the assistance of power point or other means of visual media. Pre-taped video or audio shall be held to a minimum. ()

d. A course evaluation card shall be provided to all participants to evaluate course and presentation. The completed evaluation cards must be submitted to the Electrical Bureau. ()

e. All programs are subject to audit by representatives of the Division of Building Safety or Idaho State Electrical Board for content and quality without notice and at no charge. Course and instructor approval are subject to revocation if the minimum requirements of course content or instructor qualifications are not met. ()

f. Credit will not be given to a licensee who attended a course prior to that course being approved by the Division of Building Safety. ()

02. Code Update Programs. Code update programs must cover changes to the National Electrical Code utilizing pre-approved materials such as the NFPA-IAEI Analysis of Changes. ()

03. Industry Related Programs. Industry related programs shall be technical in nature and directly related to the electrical industry. Electrical theory, application of the National Electrical Code, grounding, photovoltaic systems, programmable controllers, and residential wiring methods are examples of industry related programs. ()

04. Program Approval Procedures. ()

a. Program approvals shall be effective for one (1) code cycle. Subsequent applications for the same program may incorporate by reference all or part of the original application. ()

b. An application for course approval may be obtained from the Electrical Bureau, 1090 E. Watertower, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. The application shall include: ()

i. The title and general description of the program; ()

ii. The name of the sponsor as it will appear on the completion certificate; ()

iii. The address and contact person for the sponsor; ()

iv. The names of the instructors and dates of approval by the Division of Building Safety or completed applications for the instructors; ()

v. The hours of instruction to be presented – correspondence or on-line computer based courses must provide a minimum of twenty (20) questions to be answered by the student for each hour of credit requested for approval. For example four (4) hours of credit would require eighty (80) questions, eight (8) hours of credit would require one hundred and sixty (160) questions; ()

vi. An outline of the program; ()

- vii. The cost of the program to the participant: ()
- viii. A schedule of classes, including locations, dates, and times: ()
- ix. A list or sample of materials to be used in the program: ()
- x. A copy of the quiz to be given to the participants, if applicable: ()
- xi. A copy or sample of the completion certificate; and ()
- xii. A copy of the evaluation card. ()
- c.** Certificates of Completion. Certificates of completion must contain the following: ()
 - i. The date of the program: ()
 - ii. The title of the program: ()
 - iii. The location of the program: ()
 - iv. The name of the sponsor: ()
 - v. The number of hours of credit completed: ()
 - vi. The name of the attendee: ()
 - vii. The license number of the attendee: ()
 - viii. The name of the instructor; and ()
 - ix. The Idaho course approval number. ()
- d.** Evaluation Cards. Evaluation cards or forms must be pre-addressed to the Division of Building Safety and must include the following: ()
 - i. The date of the program: ()
 - ii. The title of the program: ()
 - iii. The location of the program: ()
 - iv. The instructor's name: ()
 - v. An evaluation of the course (e.g., poor, fair, good, very good, excellent); and ()
 - vi. An evaluation of the instructor's presentation skills. ()
- 05.** Appeals. Appeals for courses that have been denied approval shall be submitted in writing and shall be presented to the Idaho State Electrical Board within thirty (30) days for review. Decision by the Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedures Act as an appeal from a final agency action in a contested case proceeding. ()
- 06.** Instructor Approval Procedures. ()
 - a.** Instructor approvals shall be effective for one (1) code cycle. ()

b. An application for instructor approval may be obtained from the Electrical Bureau, 1090 E. Watertower, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. Documentation of the instructor qualifications must be included with the instructor application. The minimum qualification for an instructor shall be established by providing proof of one (1) of the following: ()

- i. Current and active Master or Journeyman Electrician license; ()
- ii. An appropriate degree related to the electrical field; or ()
- iii. Other recognized experience or certification in the subject matter to be presented. ()

c. Any person denied instructor approval may appeal to the Idaho State Electrical Board within thirty (30) days. Decision by the Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedures Act as an appeal from a final agency action in a contested case proceeding. ()

07. Revocation of Approval. ()

a. The Idaho State Electrical Board may revoke, suspend, or cancel the approval of any continuing education program or instructor if the Board determines that the program or instruction does not meet the intent of furthering the education of electricians. Grounds for revocation of approval shall include, but not be limited to: ()

- i. Failure of the instructor to substantially follow the approved course materials; ()
- ii. Failure to deliver instruction for the full amount of time approved for the course; or ()
- iii. Substantial dissatisfaction with the instructor's presentation or the content of the course or materials by the class attendees or representatives of the Division of Building Safety or Idaho State Electrical Board. ()

b. Decision by the Board on the appeal shall be final. Any further appeal shall be to the district court as provided by Title 67, Chapter 52, the Idaho Administrative Procedure Act, as an appeal from a final agency action in a contested case proceeding. ()

08. Requirements for Credit. In order for a licensee to receive credit for attending a class, the following requirements must be met: ()

a. The class must have prior approval by the Electrical Bureau or a state that is reciprocal with Idaho for continuing education; ()

b. The instructors must be approved instructors for the program; ()

c. The licensee must submit a copy of the certificate of completion to the Electrical Bureau; and ()

d. The course provider must provide a roster of attendees to include the name, license number, and the number of hours to be credited. ()

09. Schedule of Approved Classes. The Electrical Bureau shall publish a list of approved classes at a minimum of once a year. This list shall be forwarded to all states that are members of the continuing education reciprocal agreement and shall be made available to any licensee via the Division of Building Safety's website or by mail. ()

0123. -- 999. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.02.03 - RULES GOVERNING PERMIT FEE SCHEDULE
DOCKET NO. 07-0203-0701 (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 54-1001D, 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 17, 2007.

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 changes in fees for plumbing permits simplify the calculation of residential permit fees by basing fees on the square footage of the residence and associated outbuildings constructed at one time. Permit fees for non-residential installations increase in cost, but bring them into conformance with electrical which have been adjusted to match these fees, and HVAC permit fees which decrease substantially in cost versus their current costs. By adopting a common fee basis for electrical, plumbing, and HVAC permits, the programming and implementation costs associated with the new software system are minimized. The structure is also more easily understood by staff and customers alike. The proposed rule adopts a new square footage-based permit fee schedule for new residential construction, and also imposes an increased permit fee schedule for non-residential construction.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rulemaking increases plumbing permit fees and provides for a new system for calculating those 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: The Division of Building Safety anticipates a net increase in permit fee revenue attributable to an increase in fees for non-residential installations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the potential for a square footage-based permit fee schedule has been discussed for many years by the Plumbing Board in open meetings. The Division is in the process of implementing a new software system, and the potential for a common fee basis for permits will greatly facilitate that implementation. The square footage basis is the obvious choice for such a common basis. The reduction in permit fees for industrial and commercial installations addresses equity concerns and has been widely endorsed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-02030-0701

011. FEE SCHEDULE.

01. New Residential - Single Family Dwelling. *To include all single family dwellings, apartments, condominiums, townhouses, and/or multiple living units: Each living unit in an apartment, condominium, townhouse, or other multiple living unit shall require a residential permit fee for each living unit. Permit fee — thirty dollars (\$30); plus an inspection fee of eight dollars (\$8) per fixture (excluding garbage disposals and dishwashers in new construction) in the plumbing system of the building or premises. Replacement of fixtures in residences requires a permit of thirty dollars (\$30) plus eight dollars (\$8) per fixture. Separate permits are required for all residential sewer and water service line installations as per IDAPA 07.02.03. 011.08 unless done by plumbing contractor at time of new installation. In that event, rate will be eight dollars (\$8) each. Includes all buildings with plumbing systems being constructed on each property.*

<u>New Residential - Single-Family Dwelling</u>	
<u>Up to 1,500 Square feet of construction</u>	- \$130
<u>1,501 to 2,500 Square feet of construction</u>	- \$195
<u>2,501 to 3,500 Square feet of construction</u>	- \$260
<u>3,501 to 4,500 Square feet of construction</u>	- \$325
<u>Over 4,500 Square feet of construction</u>	- <u>Use Subsection 011.04, Other Installations Including Industrial and Commercial</u>

(3-30-06)(_____)

02. Nonresidential. *To include commercial, industrial, and other installations: The inspection fees listed in this Section shall apply to any and all plumbing installations not specifically mentioned elsewhere in this schedule. The plumbing cost shall be the cost to the owner of all labor charges and all other costs that are incurred in order to complete the installation of any and all plumbing materials and equipment installed as part of the plumbing system. For uniformity of fees when labor is performed, such labor cost shall be based upon the market value of said labor. Permit fee: To include inspection of the water service pipe to the building and waste discharge pipe from the building if the work is done by the plumbing contractor who permits the building plumbing — thirty dollars (\$30); plus an inspection fee based on the selling price of the completed installation, to be: Three percent (3%) of the value of the installation up to and including twenty thousand dollars (\$20,000); plus, two percent (2%) of the value of the installation in excess of twenty thousand dollars (\$20,000) up to and including one hundred thousand dollars (\$100,000); plus, one percent (1%) of the value of the installation in excess of one hundred thousand dollars (\$100,000) up to and including two hundred thousand dollars (\$200,000); plus, one-half of one percent (1/2%) of the value of the installation in excess of two hundred thousand dollars (\$200,000). Schools, hospitals, churches, hotels, and motels are classed as commercial. The thirty dollars (\$30) minimum permit fee applies to all new construction and to remodel or alteration jobs. Replacement of fixtures in existing commercial and industrial buildings requires the inspection fee of thirty dollars (\$30) plus eight dollars (\$8) per fixture (water heaters, lavatories, etc.). Fixtures common only to commercial and industrial, shall be inspected at the eight dollars (\$8) rate per unit. Separate permits as per IDAPA 07.02.03, Subsection 011.09 and IDAPA 07.02.03, Subsection 011.12 will be required for sewer and water service lines, if not done by the plumbing contractor doing the building plumbing. **New Residential - Multi-Family Dwellings.***

<u>New Residential - Multi-Family Dwellings</u>	
<u>Duplex Apartment</u>	- \$260

Three (3) or more multi-family units - \$130 per Building plus \$65 per Unit

(7-11-89)()

03. ~~Commercial Coaches/Manufactured Buildings.~~ *All commercial coaches and manufactured buildings constructed in Idaho or constructed for use in Idaho must purchase permits as per the residential fee schedule: Existing Residential.* Sixty-five dollars (\$65) plus ten dollars (\$10) for each additional plumbing fixture being installed up to a maximum of the corresponding square footage of the residential building. (7-11-89)()

04. Other Installations Including Industrial and Commercial. The inspection fees listed in this Section shall apply to any and all plumbing installations not specifically mentioned elsewhere in this schedule. The plumbing cost shall be the cost to the owner of all labor charges and all other costs that are incurred in order to complete the installation of any and all plumbing equipment and materials installed as part of the plumbing system. ()

a. Plumbing system cost not exceeding ten thousand dollars (\$10,000): sixty dollars (\$60) plus two percent (2%) of the total plumbing system cost. ()

b. Plumbing system cost over ten thousand dollars (\$10,000), but not exceeding one hundred thousand dollars (\$100,000): two hundred sixty dollars (\$260) plus one percent (1%) of the plumbing system cost exceeding ten thousand dollars (\$10,000). ()

c. Plumbing system cost over one hundred thousand dollars (\$100,000): one thousand one hundred sixty dollars (\$1,160) plus one half of one percent (.5%) of the plumbing system cost exceeding one hundred thousand dollars (\$100,000). ()

d. All fees calculated under this schedule must be calculated on the total plumbing cost of the job and this figure must be shown on the permit. ()

~~**105. Requested Inspections of Existing Plumbing.**~~ *Thirty-eight* A fee of sixty-five dollars (\$65) ~~minimum for one (1) per hour or less. Over one (1) hour, thirty-eight dollars (\$38) plus nineteen dollars (\$19) for each one-half (1/2) hour or portion thereof in excess of one (1) an hour shall apply, including with the requesting party responsible for all costs incurred in out-of-state travel time.~~ (7-11-89)()

~~**106. Additional Fees and Re-Inspection Fees.**~~ *The cost of reinspection shall be thirty-eight dollars (\$38):* A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply to: (7-11-89)()

a. Trips to inspect when: ()

i. The submitter of the permit has given notice to the Division of Building Safety that the work is ready for inspection and it is not; or ()

ii. If the submitter has not accurately identified the work location; or ()

iii. If the inspector cannot gain access to make the inspection. ()

b. Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. ()

c. Each trip necessary to remove a red tag from the jobsite. ()

d. When corrections have not been made in the prescribed time, unless an extension has been requested and granted. ()

e. No permit - failure to post or send permit and required fee in the prescribed time will, at the discretion of the Division, result in the assessment of a double fee. ()

~~13. Other. Fee for permits not clearly giving location of installation, either by direction or maps—
thirty dollars (\$30). (7-11-89)~~

~~1407. Plan Checking Fee. Thirty Sixty-five dollars (\$3065) minimum for one (1) per hour or less. Over
one (1) hour—thirty dollars (\$30) plus fifteen dollars (\$15) for each one-half (1/2) hour or portion thereof.
(7-11-89)(_____)~~

~~048. Mobile Homes. Each connection or re-connection to existing sewer and water stubs shall be forty
sixty-five dollars (\$4065). (7-11-89)(_____)~~

~~059. Mobile Home Parks and/or RV Parks. Sewer and water service lines in mobile home parks and/
or RV parks shall be classed as commercial. NOTE: This does not include or permit the connection of the mobile
home. See IDAPA 07.02.03, Subsection 011.04. (7-11-89)~~

~~0610. Residential. Lawn sprinklers shall be thirty sixty-five dollars (\$3065) plus eight dollars (\$8) for
each backflow prevention device. (7-11-89)(_____)~~

~~0711. Water Conditioners. Water conditioners shall be thirty sixty-five dollars (\$3065) plus eight
dollars (\$8) per unit. (7-11-89)(_____)~~

~~0812. Sewer and Water Permit Fees. Residential sewer and water service line fees shall apply to all new
construction, installations, and replacements. (3-30-06)~~

~~a. Sewer and water permit fees for excavators or property owners shall be assessed at the same rate as
residential or nonresidential based on the classification of the construction project. (3-30-06)~~

~~b. Residential sewer and water service lines installation permit fees will be assessed at the rate of
thirty-eight dollars (\$38) each or fifty sixty-five dollars (\$5065) for a combination of both if only one (1) inspection is
required and the work is done by the same individual. (3-30-06)(_____)~~

~~0913. Non-residential. Lawn sprinkler permit fees shall be calculated at the same rate as nonresidential
industrial and commercial plumbing installations; three percent (3%) of the value of the installation up to and
including twenty thousand dollars (\$20,000), plus two percent (2%) of the value of the installation in excess of twenty
thousand dollars (\$20,000) up to and including one hundred thousand dollars (\$100,000), plus one percent (1%) of
the value of the installation in excess of one hundred thousand dollars (\$100,000) up to and including two hundred
thousand dollars (\$200,000), plus one-half of one percent (1/2%) of the value of the installation in excess of two
hundred thousand dollars (\$200,000). (7-11-89)(_____)~~

~~104. Nonresidential Sewer and Water Service Lines Permit Fees. If installed by someone other than
the plumbing contractor of the building, fees shall be calculated at the same rate as nonresidential industrial and
commercial plumbing installations; three percent (3%) of the value of the installation up to and including twenty
thousand dollars (\$20,000), plus two percent (2%) of the value of the installation in excess of twenty thousand dollars
(\$20,000) up to and including one hundred thousand dollars (\$100,000), plus one percent (1%) of the value of the
installation in excess of one hundred thousand dollars (\$100,000) up to and including two hundred thousand dollars
(\$200,000), plus one-half of one percent (1/2%) of the value of the installation in excess of two hundred thousand
dollars (\$200,000). (7-11-89)(_____)~~

~~15. Technical Service Fee. Thirty-eight Sixty-five dollars (\$3865) minimum for one (1) per hour plus
nineteen dollars (\$19) for each one-half (1/2) hour or portion thereof. (7-11-89)(_____)~~

~~16. No Permit. Failure to send permit and required fee in the prescribed time will, at the discretion of
the Department, result in the assessment of a double fee. (7-11-89)~~

~~176. Multipurpose Residential Fire Sprinkler and Domestic Water Supply System Fee. The
inspection fee for the installation of the fire sprinkler portion of a multipurpose residential fire sprinkler and domestic
water supply system in a one- or two-family residence shall be a minimum of sixty-five dollars (\$605) or four dollars
(\$4) per fire sprinkler head, whichever is greater. (3-24-05)(_____)~~

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-0701

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 54-2605(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 17, 2007.

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 change is needed to clarify and specify the permitted scope of work for appliance plumbing specialty licensing.

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 rule is the result of long-term discussions relative to the problems with water treatment installers. The plumbing industry is largely supportive of this proposal and many water treatment companies have also expressed support.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720
Boise, ID 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0205-0701

018. APPLIANCE PLUMBING SPECIALTY LICENSE.

The purpose of this section is to set out the special types of plumbing installations for which an appliance plumbing specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (7-1-99)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

02. Qualified Apprentice Plumbers. Qualified apprentice plumbers as defined in Section 54-2611(c), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

03. Minimum Experience Requirements. (7-1-99)

a. Experience gained by an individual while engaged in the practice of appliance plumbing specialty shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (7-1-99)

b. All qualified appliance plumbing specialty journeymen shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (7-1-99)

c. Appliance plumbing specialty contractors must have a two thousand dollars (\$2,000) surety bond, thirty (30) months minimum journeyman experience, and successful completion of appliance plumbing specialty contractor's test. (7-1-99)

d. Appliance plumbing specialty journeymen must have eighteen (18) months apprentice on-the-job experience, satisfactory completion of seventy-two (72) hours of approved, related training classes and successful completion of the appliance plumbing specialty journeyman's test. (7-1-99)

e. Appliance plumbing specialty apprentices must be employed by a licensed contractor, under the supervision of a journeyman, be enrolled in or have completed approved related training classes and maintain state registration. (7-1-99)

04. Special Grandfathering Provision. (7-1-99)

a. Contractor: In lieu of the thirty (30) months minimum journeyman experience requirement, an individual may use five (5) years experience of owning and operating a business where this specialty applies AND satisfactory completion of seventy-two (72) hours of approved related training classes. For this purpose, a business is defined as an activity in which tax returns were required to be and have been filed for at least five (5) years. (7-1-99)

b. Journeyman: In lieu of the eighteen (18) months apprentice on-the-job experience requirement, an individual may use five (5) years experience working for a business where this specialty applies. For this purpose, working for a business is defined as being issued a W-2 earning form from a related business or businesses for at least five (5) years. (7-1-99)

05. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the Plumbing Bureau, Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required experience in the field of this specialty. (7-1-99)

06. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (7-1-99)

07. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code.

(7-1-99)

08. Scope of Work Permitted. A person holding a valid appliance plumbing specialty license is permitted to disconnect, cap, remove, and reinstall, within sixty (60) inches of original location, the following: ()

a. ~~Water heating appliance, water treating or filtering devices~~ conditioning equipment, which includes, but is not limited to: ()

i. Water softeners; ()

ii. Conditioners; ()

iii. Whole house filtration systems; ()

iv. Iron filters; ()

v. Chlorine filters; ()

vi. Fluoride filters; ()

vii. Sediment filters (self-cleaning and canister type); ()

viii. Reverse Osmosis filtration; ()

ix. Other under counter water filtration systems; and ()

x. Air ~~or~~ and space temperature modifying equipment which involves potable water; or humidifiers; temperature and pressure relief valves; condensate drains and indirect drains in one (1) and two (2) family residences only. ()

b. Work authorized under the license ~~Does not include~~ installation, testing, or certifying of backflow prevention devices. ~~Does NOT include~~ or any modification to the drain, waste, ~~or~~ and vent systems. Work done under the license ~~Must~~ must comply with all Idaho State Plumbing laws and rules and ~~the requirements of~~ the Uniform Plumbing Code. (7-1-99)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.07 - RULES GOVERNING CIVIL PENALTIES

DOCKET NO. 07-0207-0701

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 54-2605, 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 17, 2007.

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 change is needed to eliminate confusion and misunderstanding regarding whether a provision for civil penalties applies to licensed plumbing contractors. The proposed change adds language to the rule to clarify that a person holding a valid plumbing contractor license is not subject to certain civil penalties.

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 Board felt strongly that clarification was needed to better reflect the Board's intent when civil penalties are initially implemented.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720
Boise, Idaho 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE RULE TEXT OF DOCKET NO. 07-0207-0701

011. CIVIL PENALTIES.

The following acts shall subject the violator to penalties based on the following schedule. (3-24-05)

01. Plumbing Contractor. Except as provided by Section 54-2602, Idaho Code, any person who acts, or purports to act as a plumbing contractor, as defined by Section 54-2611(a), Idaho Code, without a valid Idaho state certificate of competency authorizing him to do so shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

02. Certification or Registration. Except as provided by Section 54-2602, Idaho Code, any person performing plumbing as defined in Section 54-2603, Idaho Code without an appropriate certificate of competency or registration shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

03. Performance Outside Scope of Certificate. Any specialty contractor or specialty journeyman performing plumbing installations, alterations or maintenance outside the scope of the specialty certificate of competency shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

04. Fees, Permits and Inspections. Any person, other than a person who holds a valid Idaho state plumbing contractor's certificate of competency, failing to pay applicable fees, or properly post a plumbing permit, or to request an inspection of all pipes, fittings, valves, vents, fixtures, appliances, appurtenances, and water treatment installations and repairs shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand (\$1,000) for each offense thereafter. ~~(3-24-05)~~(____)

05. Corrections. Any person, other than a person who holds a valid Idaho state plumbing contractor's certificate of competency, who fails to make corrections in the time allotted in the notice on any plumbing installation as set forth in Section 54-2625, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ~~(3-24-05)~~(____)

06. Gross Violation. In the case of continued, repeated or gross violation of Title 54, Chapter 26, Idaho Code or IDAPA 07.02, disciplinary action shall be initiated against certificate holders under this chapter or the matter shall be referred for prosecution. (3-24-05)

07. Judicial Review. Any party aggrieved by the final action of the Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-24-05)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.03 - RULES FOR MODULAR BUILDINGS
DOCKET NO. 07-0303-0701 (FEE RULE) (NEW CHAPTER)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 13, 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 39-4302, 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 17, 2007.

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:

Senate Bill No. 1155, passed by the 2007 Legislature and signed by the Governor, established the Modular Building Advisory Board and the accompanying legal structure. The previously established administrative rules governing the modular building industry were rendered moot by the new statute. Basic, revised administrative rules are necessary to enable operation of the new program. The new rules incorporate the previously established rules, modified to accommodate changes incumbent in the new law. The rules establish fees, inspection baselines, and enforcement guidelines.

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:

These rules are necessary to protect the public health, safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Pursuant to Section 39-4303, Idaho Code, applicable fees shall be established by the Modular Building Advisory Board through rulemaking. This is the initial set of rules of the Board, including setting fees, which the Governor's Office has approved as necessary in the public's interest to implement the provisions of new Chapter 43, Title 39, 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: Negotiated rulemaking was not utilized in view of the need for a temporary rule to implement the provisions of new Chapter 43, Title 39, Idaho Code.

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

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 24, 2007.

DATED this 15th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0303-0701

**IDAPA 07
TITLE 03
CHAPTER 03**

07.03.03 - RULES FOR MODULAR BUILDINGS

000. LEGAL AUTHORITY.

The Modular Building Advisory Board of the Division of Building Safety is authorized under Section 39-4302, Idaho Code, to promulgate rules concerning the enforcement and administration of Title 39, Chapter 43, Idaho Code, for Modular Buildings. (8-13-07)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.03.03, "Rules for Modular Buildings," Division of Building Safety. (8-13-07)T

02. Scope. These rules prescribe the criteria for enforcement and administration of the Idaho Modular Buildings Act by the Modular Building Advisory Board and the Building Bureau of the Division of Building Safety. (8-13-07)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has statements that pertain to the interpretation of the rules of this chapter. These statements are available for review and copying at the offices of the Division of Building Safety. (8-13-07)T

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative relief of the provisions contained herein. (8-13-07)T

004. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE, FACSIMILE AND WEB ADDRESS.

The principal place of business of the Division of Building Safety is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642. The telephone number of the office is (208) 334-3896. The facsimile number of the office is (208) 855-9399. The web address of the office is <http://dbs.idaho.gov/>. (8-13-07)T

005. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (8-13-07)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

The terms defined in Section 010 of these rules shall have the following meaning for all parts of IDAPA 07.03.03, unless the context clearly indicates another meaning. (8-13-07)T

01. Administrator. The Administrator of the Division of Building Safety for the state of Idaho. (8-13-07)T

02. Alterations or Conversions of Modular Buildings. Any change from the approved plans or installation instructions which would affect the structural, mechanical, electrical or plumbing systems of Modular Buildings bearing a Division Insignia of approval and shall include the replacement, addition, modification, or removal of any structural member; plumbing, heat-producing or electrical equipment, or installation which may effect such systems prior to first occupancy. Any such alteration or conversion shall first be approved by testing and inspection in the same manner as original systems or component parts. The following shall not constitute alteration or conversion: (8-13-07)T

a. Repairs with approved replacement parts; (8-13-07)T

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing; (8-13-07)T

c. Replacement of equipment and appliances in kind; (8-13-07)T

d. Adjustment and maintenance of equipment. (8-13-07)T

03. Board. The Modular Building Advisory Board, as created in Section 39-4302, Idaho Code. (8-13-07)T

04. Building Site. Any tract, parcel, or subdivision of land upon which a Modular Building is installed or is to be installed. (8-13-07)T

05. Closed Construction. Any manufactured building or building component that may enclose factory installed structural, mechanical, electrical, or plumbing systems and is not open for visual inspection at the Building Site. (8-13-07)T

06. Commercial Coach. A Modular Building with permanent running gear and a hitch assembly that is designed and constructed for nonresidential occupancy classifications only. Permanent running gear includes springs, spring hangers, axles, bearings, wheels, brakes, rims and tires and their related hardware. (8-13-07)T

07. Division. The Idaho Division of Building Safety. (8-13-07)T

08. Insignia. A label or tag issued by the Division to indicate compliance with the codes, standards, rules, and regulations established for manufactured building systems, subsystems, or building elements, Modular Buildings, and Commercial Coaches. (8-13-07)T

09. Modular Building. Any building or building component, other than a manufactured or mobile home, that is of Closed Construction and is either entirely or substantially prefabricated or assembled at a place other than the Building Site. (8-13-07)T

10. Technical Service. Conducting research, evaluation, consultation, interpretation, and clarification by the Division of technical data relating to the application of these rules, and shall also include special field inspections that are not covered in other portions of these rules. (8-13-07)T

011. -- 026. (RESERVED).

027. PERMITS.

Building permits shall be obtained from the Division prior to the construction of structures governed by the Act or rules promulgated by the Board. (8-13-07)T

028. PLAN REVIEW.

01. Jurisdiction. The Division shall have exclusive jurisdiction and authority to conduct plan reviews of the in-plant construction of Modular Buildings. (8-13-07)T

02. Plans Specifications. Plans shall be drawn to scale and shall be on uniformly sized standard stock drawing sheets not to exceed thirty-six (36) inches by sixty (60) inches or in digital PDF format. (8-13-07)T

03. Plans Not Required. Plans shall not be required for group U occupancies of Type V conventional light-frame wood construction. (8-13-07)T

04. Nonconformance. Should the plan submittal not conform to the requirements of these rules, the applicant shall be notified in writing within fifteen (15) work days of the date they are received by the Division. Should the applicant fail to submit a completely corrected plan submittal in accordance with the information supplied by the Division within ninety (90) days of such notice, the plan submittal will be deemed abandoned. Subsequent submission thereafter shall be processed as a new plan submittal. (8-13-07)T

05. Distribution of Approved Copies. An approved copy of the plan submittal shall be returned to and retained by the manufacturer and a copy shall be retained by the Division. When necessary, an additional copy shall be distributed for use by third party or contract inspectors. (8-13-07)T

06. Proprietary Information. All material submitted by the manufacturer in the form of design plans, engineering data, test results, and other design information relating to their application will be considered proprietary information and will not be released for public scrutiny except when so ordered by a court of competent jurisdiction. (8-13-07)T

07. Revisions to Approved Modular Building Plans. Where the manufacturer proposes to revise his submitted designs, or Division adopted rules or codes are amended to necessitate such a change, the manufacturer shall submit revised plans for examination and approval. (8-13-07)T

08. Application Provisions. The provisions of Section 028 of these rules shall apply only to plans for work which will be accomplished at the place of manufacture. (8-13-07)T

029. FEES.

The following fee schedule shall be applicable for the functions cited: (8-13-07)T

01. Modular Building Permit Fees. Other than as herein specified in Section 029 of these rules, the permit fee schedule for Modular Buildings shall be as provided herein in Table 1-A plus ninety dollars (\$90) and two and one-half percent (2.5%) of the plumbing, electrical, and HVAC installation costs. The determination of value or valuation shall be based on the total value of all construction work for which a permit is issued.

1997 UNIFORM BUILDING CODE - TABLE 1-A – MODULAR BUILDING PERMIT FEES	
Total Valuation	Fee
\$1 to \$500	\$23.50
\$501 to \$2,000	\$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000

\$25,001 to \$50,000	\$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof

(8-13-07)T

02. Other Inspections and Fees.

(8-13-07)T

a. Inspections outside of normal business hours: sixty-five dollars (\$65) per hour (minimum charge - two (2) hours). (8-13-07)T

b. Re-inspection fees: sixty-five dollars (\$65) per hour. (8-13-07)T

c. Inspections for which no fee is specifically indicated: sixty-five dollars (\$65) per hour (minimum charge - one half (1/2) hour). (8-13-07)T

d. Additional plan review required by changes, additions, or revisions to plans: sixty-five dollars (\$65) per hour (minimum charge - one half (1/2) hour). (8-13-07)T

e. For use of outside consultants for plan checking and inspections or both: actual costs. (8-13-07)T

03. Insignia Tag Fee. In instances where building permit fees are not charged for Modular Buildings, a one hundred dollar (\$100) fee will be charged for an Insignia. (8-13-07)T

04. Investigation Fee. Whenever any work for which a permit is required by these rules has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by these rules. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of these rules nor from any penalty prescribed by law. (8-13-07)T

05. Payment of Fees. Fees shall be paid to and collected by the Division. (8-13-07)T

06. Plan Review. Where the Modular Building plans have not been previously approved, the Modular Building fee shall include an additional amount equal to sixty-five percent (65%) of the permit fee calculated in accordance with Table 1-A. (8-13-07)T

07. Refund of Permit Fees. The Administrator may authorize refunding of any permit fee paid which was erroneously paid or collected. The Administrator may authorize refunding of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with these rules. The Administrator shall not authorize refunding of any permit fee paid except on written application filed by the original applicant not later than one hundred eighty (180) days after the date of fee payment. (8-13-07)T

08. Refund of Plan Review Fees. There shall be no refund of plan review fees. (8-13-07)T

030. RIGHT OF ENTRY.

Whenever necessary to make an inspection to enforce any of the provisions of Title 39, Chapter 43, Idaho Code, or whenever the Administrator or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises unsafe, the Administrator or his authorized representative shall enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Division by Title 39, Chapter 43, Idaho Code; provided that if such building or premises is occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the Administrator shall have recourse to every remedy provided by law to secure entry. (8-13-07)T

031. REMOVAL OF ORDERS AND NOTICES PROHIBITED.

Removal of stop work or prohibited occupancy orders or notices from a building or structure, bearing such order or notice by any person or persons not authorized by the Administrator or his authorized representative, shall constitute a violation under the provisions of Section 39-4126, Idaho Code, and shall fall under the provisions of Section 18-317, Idaho Code. (8-13-07)T

032. MODULAR BUILDINGS.

01. Enforcement and Administration. The Administrator shall administer and enforce all the provisions of these rules. Any officer, agent, or employee of the Division is authorized to enter any premises during any normal or operational hours where Modular Buildings are manufactured for the purpose of examining any records pertaining to quality control and inspection and may inspect any such units, equipment, or installations to insure compliance with the provisions of these rules and codes enumerated in Title 39, Chapters 41 and 43, Idaho Code. When it becomes necessary, he may require that a portion or portions of such Modular Building units be removed in order that an inspection may be made to determine compliance. Every manufacturer of Modular Buildings shall obtain prior approval and an Insignia for each Modular Building unit to be installed in the state of Idaho. (8-13-07)T

02. Inspections. (8-13-07)T

a. Inspections at Manufacturing Plants. The Division shall conduct inspections at the manufacturing plant to determine compliance with the provisions of these rules and with codes adopted by Title 39, Chapter 41, Idaho Code, and Title 54, Chapters 10, 26, and 50, Idaho Code. (8-13-07)T

b. In-Plant Inspections. Due to the repetitive nature of the manufacturing process, the required inspections outlined in the International Building Code or International Residential Code may not be required if, in the opinion of the Division, compliance can be obtained by periodic inspections. The Division shall conduct periodic unannounced inspections at any manufacturing site to review any or all aspects of a manufacturer's production and inspectional control procedures. Each unit, however, shall be inspected at least once during the course of production for compliance with the adopted standards. No unit manufactured to be installed in the state of Idaho will be shipped from the point of manufacture without inspection and attached Insignia. (8-13-07)T

c. Field Inspections. All existing Modular Buildings to be installed in the state of Idaho not bearing the Division's Insignia shall not be used or occupied until required Idaho Insignia has been issued by the Division and properly affixed in accordance with these rules. Applicants for Insignia shall obtain permits, plan approvals, and inspections as required by these rules. (8-13-07)T

03. Installation Inspection. In order to complete the installation of the Modular Building, approval and inspection of said installation by the enforcement agency having jurisdiction over the site location shall be required. (8-13-07)T

04. Field Technical Service. Any person may request field Technical Service and requests for such service shall be submitted to the Division in writing. (8-13-07)T

05. Local Enforcement Agencies. (8-13-07)T

a. Rights of Local Enforcement Agency. A local enforcement agency shall have the right to require a complete set of plans and specifications approved by the Division for each Modular Building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit to a Building Site. After leaving the manufacturing facility, future alterations or conversions of Division approved Modular Buildings shall be field inspected by the local unit of government having jurisdiction. (8-13-07)T

b. Limitations of Rights of Local Enforcement Agency. A local enforcement agency shall not have the right to: open for inspection any Modular Building or component bearing an Insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that Modular Buildings meet any requirements not equally applicable to on-site construction; or to charge permit or plan review fees for any portion of the structure prefabricated or assembled at a place other than the Building Site. (8-13-07)T

06. Insignia. (8-13-07)T

a. Required Insignia. Each Modular Building section shall bear a Division Insignia prior to leaving the manufacturing facility. Assigned Insignia are not transferable and are void when not affixed as assigned. All such voided Insignia shall be returned to, or may be confiscated by, the Division. Insignia remain the property of the Division and may be confiscated in the event of violation of conditions of approval. Assigned Insignia affixed in the field shall be under the direction of the Division's authorized agent. (8-13-07)T

b. Insignia Location. Insignias shall be placed on the front, left-hand side of the building. (8-13-07)T

c. Serial Number. Each Modular Building shall bear a legible identifying serial number, which shall include the state of manufacture. Each section of a multiple Modular Building shall have the same identifying serial number followed by a numerical sequence identifier and/or a letter suffix. Characters for serial numbers shall be three-eighths (3/8) inch minimum height. Numbers shall not be stamped into a hitch assembly or draw bar. (8-13-07)T

d. Data on Insignia. The date of manufacture, showing month, week, and year will be shown on the Insignia. Such data will be provided by the manufacturer on the application for Insignia. (8-13-07)T

07. Reciprocal Agreements. The provisions for Insignia of compliance as specified in a written and signed reciprocal agreement between the Division and any other state shall take precedence over the provisions of these rules. Where there is evidence that the in-plant inspection controls in out-of-state plants within states having reciprocal agreements with the state of Idaho are not being maintained for units to be placed in Idaho, the Division reserves the right to make out-of-state inspections, and fees for such inspection as set forth in these rules shall be paid by the manufacturer. (8-13-07)T

033. -- 999. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.04.02 - SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS

DOCKET NO. 07-0402-0701

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 39-8605 and 39-8614, 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 17, 2007.

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 code references noted in Section 39-8614, Idaho Code, are not specific as to the current editions being enforced. The administrator of the Division of Building Safety is charged with promulgating rules to specify the particular editions being enforced. The proposed rule change adopts current editions of the applicable codes along with applicable amendments and updates as listed.

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 specification of applicable code editions has been lacking since the implementation of the Elevator Safety Act. This issue has been discussed with building owners and elevator companies and both groups support the proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 28th day of August, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0402-0701

004. ADOPTION AND INCORPORATION BY REFERENCE.

01. Documents. ~~There are no documents~~ The following codes, amendments, and updates are hereby adopted and incorporated by reference into these rules for all conveyances subject to this chapter. (4-6-05)()

a. ANSI/ASME A17.1 2004, Safety Code for Elevators and Escalators with 2005 Addenda and 2005 Supplement. ()

b. ANSI/ASME A17.2 2004 Guide for Inspection of Elevators, Escalators, and Moving Walks.()

c. ANSI/ASME A17.3 2005 Safety Code for Existing Elevators and Escalators. ()

d. ANSI/ASME A17.4 1999 Guide for Emergency Personnel. ()

e. ANSI/ASME A17.5 2005 Safety Standards for Platform Lifts and Chairlifts. ()

f. ICC/ANSI A117.1 2003 Accessible and Usable Buildings and Facilities. ()

g. ANSI/ASME A18.1 2005 Safety Standards for Platform Lifts and Chairlifts. ()

h. ASME QE-1 2004 Standard for the Qualification of Elevator Inspectors. ()

02. Copies. Copies of the codes, amendments, and updates listed in Subsection 004.01 of these rules are available for review at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - PUBLIC CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-0701

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 17, 2007.

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 rule change is necessary to facilitate the enforcement of changes to the subcontractor naming requirements contained in House Bill No. 139 enacted by the 2007 Idaho Legislature. The proposed rule changes consolidate two existing specialty construction categories that involve HVAC work into one category. This will eliminate confusion as to which category of license is applicable to the HVAC work being done.

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 an immediate solution was necessary to avoid continued confusion about the appropriate license specialty involved and the solution is non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 10th day of August 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID
P. O. Box 83720, Boise, ID 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0701

200. TYPE 4-SPECIALTY CONSTRUCTION CATEGORIES.

A license for Type 4-Specialty Construction shall list one (1) or more specialty construction categories to which the license is restricted. Categories and their definitions are: (4-6-05)

01. 01107 Engineering. A specialty contractor whose primary business includes providing engineering and design services such as civil, electrical, mechanical, and structural. (4-6-05)

02. 01541 Scaffolding and Shoring. A specialty contractor whose primary business is the installation of any temporary elevated platform and its supporting structure used for supporting workmen or materials or both, and props or posts of timber or other material in compression used for the temporary support of excavations, formwork or unsafe structures; the process of erecting shoring. (4-6-05)

03. 01542 Craning and Erection. A specialty contractor whose primary business includes the art, ability and skill to safely control the workings of a crane in such a manner that building materials, supplies, equipment and structural work can be raised and set in a final position. (4-6-05)

04. 01550 Construction Zone Traffic Control. A specialty contractor whose primary business is the installation or removal of temporary lane closures, flagging or traffic diversions, utilizing pilot cars, portable devices such as cones, delineators, barricades, sign stands, flashing beacons, flashing arrow trailers, and changeable message signs on roadways, public streets and highways or public conveyances. (4-6-05)

05. 01570 Temporary Erosion and Sediment Controls. A specialty contractor whose primary business includes the ability and expertise to install silt fencing or other similar devices to prevent erosion and contain silt. (4-6-05)

06. 02110 Excavation, Removal and Handling of Hazardous Material. A specialty contractor whose primary business includes the excavation and removal of toxic and hazardous site materials. Contractors must be properly licensed and certified if required. (4-6-05)

07. 02115 Removal of Underground Storage Tanks. A specialty contractor whose primary business includes, but is not limited to, the excavation, removal, cleanup, and disposal of underground storage tanks that have contained petrochemical type fuels. This work should include the sampling and testing of surrounding materials and filing of closure documents. (4-6-05)

08. 02195 Environmental Remediation, Restoration and Soil Stabilization. A specialty contractor whose primary business is the remediation and restoration of contaminated environmental sites. (4-6-05)

09. 02210 Drilling. A specialty contractor whose primary business includes practical elementary knowledge of geology and hydrology; the art, ability, knowledge, science and expertise to bore, drill, excavate, case, pack or cement by use of standard practices, including the use of diamond bits, cable tools, percussion, air percussion, rotary, air rotary, reverse circulation rotary methods or jetting. (4-6-05)

10. 02220 Demolition. A specialty contractor whose primary business includes the ability and expertise to demolish all types of buildings or structures and to remove all of such buildings or structures from the premises, and maintain the premises surrounding demolition site safely for passing public. (4-6-05)

11. 02230 Site Clearing. A specialty contractor whose primary business includes the ability and expertise to remove and dispose of all trees, brush, shrubs, logs, windfalls, stumps, roots, debris and other obstacles in preparation for excavation of a construction site or other uses. (4-6-05)

12. 02231 Logging. A specialty contractor whose primary business and expertise includes the clearing, cutting, removal and transportation of logs and trees and the construction of temporary roads and structures for such operations along with any reclamation work associated with such operations. (4-6-05)

13. 02232 Tree Removal and Trimming. A specialty contractor whose primary business includes pruning, removal, and/or guying of trees, limbs, stumps, and bushes including grinding and removal of such items.

(4-6-05)

14. 02240 Dewatering and Subsurface Drainage. A specialty contractor whose primary business is to control the level and flow of subsurface water. (4-6-05)

15. 02260 Earth Retention Systems, Mechanical Stabilized Earth Walls and Retaining Walls. A specialty contractor whose primary business includes the building of earth retention systems, mechanical stabilized earth walls and retaining walls. (4-6-05)

16. 02265 Slurry Walls. A specialty contractor whose primary business is the construction of below ground structural diaphragm walls or containment walls through the combined use of trench excavation, mud slurry and tremie concrete. (4-6-05)

17. 02270 Rockfall Mitigation and High Scaling. A specialty contractor whose primary business is rockfall mitigation and high scaling. (4-6-05)

18. 02310 Excavation and Grading. A specialty contractor whose primary business includes such work as digging, moving and placing material forming the surface of the earth in such manner that a cut, fill, excavation and any similar excavating operation can be done with the use of hand and power tools and machines that are used to dig, move and place that material forming the earth's surface. (4-6-05)

19. 02312 Dust Control, Dust Abatement and Dust Oiling. A specialty contractor whose primary business is dust control, dust abatement and dust oiling. (4-6-05)

20. 02317 Rock Trenching. A specialty contractor whose primary business is rock trenching. (4-6-05)

21. 02318 Hauling. A specialty contractor whose primary business includes the ability and expertise to obtain or move specified materials by transportation in a vehicle. (4-6-05)

22. 02319 Blasting. A specialty contractor whose primary business includes the use of conventional and high explosives for pre-splitting, surface, underground and underwater blasting, drill, trench, or excavate for use of explosives; priming and loading drilled, trenched or excavated areas by pipe tamping, pneumatic loading, injector loading, mud capping, slurry loading, combination of pneumatic and injector loading or hand loading; use of volt, ohms and milliampere meter (VOM) in testing blasting machine output voltage, power line voltage, measuring electric blasting cap or blasting circuit resistance, testing for current leakage, testing for AC-DC stray current and voltage, leading wires for open or short circuits, rack bar blasting machine for running short or galvanometer output voltage; use of blasting caps, electric blasting caps, delay electric blasting caps, primacord and all other detonating devices. (4-6-05)

23. 02325 Dredging. A specialty contractor whose primary business includes the excavation or removal of earth, rock, silt, or sediment from bodies of water including but not limited to streams, lakes, rivers or bays by means of specialized equipment. (4-6-05)

24. 02404 Horizontal and Directional Earth Boring, Trenching and Tunneling. A specialty contractor whose primary business and expertise includes boring, trenching or tunneling. (4-6-05)

25. 02450 Drilled Piers, Pile Driving, Caisson Drilling, Geopier and Helical Piers. A specialty contractor whose primary business includes drilling piers, pile driving, caisson drilling, Geopier and helical piers. (4-6-05)

26. 02500 Utilities. A specialty contractor whose primary business includes the construction and installation of pipe lines for the transmission of sewage, gas and water, including minor facilities incidental thereto; installation of electrical poles, towers, arms, transformers, fixtures, conduits, conductors, switch gear, grounding devices, panels, appliances and apparatus installed outside of buildings; including excavating, trenching, grading, back fill, asphalt patching as well as all necessary work and installation of appurtenances in connection therewith. (4-6-05)

27. **02520 Well Drilling.** A specialty contractor whose primary business includes the practical elementary knowledge of geology, hydrology, the occurrence of water in the ground, water levels in wells, the prevention of surface and sub-surface contamination and pollution of the ground water supply; and the art, ability, experience, knowledge, science, and expertise to bore, drill, excavate, case, screen, cement, clean and repair water wells; or to do any or any combination of any or all such boring, drilling, excavating, casing, cementing, cleaning and repairing with hand or power tools or rigs, including the installation and repair of pumps. (4-6-05)

28. **02580 Installation of Communication Towers.** A specialty contractor whose primary business and expertise is the installation of communication towers. (4-6-05)

29. **02660 Membrane Liners for Ponds and Reservoirs.** A specialty contractor whose primary business includes the installation of liners for the purpose of containment of liquids. (4-6-05)

30. **02720 Crushing.** A specialty contractor whose primary business includes the ability and expertise to reduce rocks and aggregates to a smaller and uniform size and gradation to meet an agreed specification. (4-6-05)

31. **02740 Asphalt Paving.** A specialty contractor whose primary business includes the installation of aggregate base course, cement treated base, bitumen treated base, asphalt concrete and the application of asphalt surfacing and surface repairs of streets, intersections, driveways, parking lots, tennis courts, running tracks, play areas; including the application or installation of primer coat, asphalt binder course, tack coating, seal coating and chips, slurry seal and chips, flush or flog coats, asphalt curbs, concrete bumper curbs, redwood headers, asphalt surface binder emulsion, asbestos and sand and acrylic color systems. (Synthetic and athletic surfacing are category 02790 Athletic and Recreational Surfaces.) Also includes crack sealing, asphalt maintenance repair and soil pulverization. (4-6-05)

32. **02761 Traffic Marking and Striping.** A specialty contractor whose primary business includes the art, ability and expertise to apply markings to streets, roadways, or parking surfaces pre-designed for the use of parking or passage of vehicles by the application of directional lines, buttons, markers, and signs made of but not limited to plastic, paint, epoxies and rubber, in such manner as to provide for the channeling and controlling of the traffic flow. Also includes temporary striping. (4-6-05)

33. **02785 Asphalt Maintenance and Repair, Seal Coating, Crack Sealing and Chip Sealing.** A specialty contractor whose primary business is asphalt maintenance and repair, seal coating, crack sealing and chip sealing. (4-6-05)

34. **02790 Athletic and Recreational Surfaces.** A specialty contractor whose primary business is the installation of specialty surfaces including but not limited to non-wood athletic floors, tennis courts, running tracks and artificial turf. This would include any subsurface preparation such as leveling, excavation, fill and compaction or grading. The application of surfacing, mixing, spreading or placing of emulsions, binders, sand and acrylic color systems is also included along with the installation of modular, plastic athletic floors such as "Sport Court" type floors. This category does not include any type of structure required for the installation of these surfaces. (4-6-05)

35. **02810 Sprinkler and Irrigation Systems.** A specialty contractor whose primary business includes the installation of types and kinds of water distribution systems for complete artificial water or irrigation of gardens, lawns, shrubs, vines, bushes, trees and other vegetation, including the trenching, excavating and backfilling in connection therewith. (Low voltage only.) (4-6-05)

36. **02820 Fencing.** A specialty contractor whose primary business includes the installation and repair of any type of fencing. (4-6-05)

37. **02840 Guardrails and Safety Barriers.** A specialty contractor whose primary business includes the installation of guardrails and safety barriers (including cattle guards). (4-6-05)

38. **02850 Bridges and Structures.** A specialty contractor whose primary business includes the installation, alteration and repair of bridges and related structures, including culverts. (4-6-05)

39. **02855 Bridge Crossings and Box Culverts.** A specialty contractor whose primary business is the

installation and/or construction of any bridge or crossing structure shorter than twenty (20) feet measured on the centerline of the roadway or trail. (4-6-05)

40. 02880 Installation of School Playground Equipment. A specialty contractor whose primary business is the installation of school playground equipment. (4-6-05)

41. 02890 Traffic Signs and Signals. A specialty contractor whose primary business includes the art, ability, knowledge, experience, science and expertise to fabricate, install and erect signs, including electrical signs and including the wiring of such signs. A licensed electrician must perform all the electrical work. (4-6-05)

42. 02900 Landscaping, Seeding and Mulching. A specialty contractor whose primary business includes the preparation of plots of land for architectural, horticulture and provisions of decorative treatment and arrangement of gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation; construction of conservatories, hot and green houses, drainage and sprinkler systems, and ornamental pools, tanks, fountains, walls, fences and walks, arrange, fabricate and place garden furniture, statuary and monuments in connection therewith. (4-6-05)

43. 02910 Slope Stabilization, Hydroseeding, Hydromulching, Native Plant Revegetation for Erosion Control. A specialty contractor whose primary business is slope stabilization, including necessary tillage and plant bed preparation using hydroseeding, hydromulching and native plant revegetation for erosion control. (4-6-05)

44. 02935 Landscape Maintenance. A specialty contractor whose primary business and expertise includes the maintenance of existing lawns, gardens, and sprinkler systems. This would include mowing, weeding, fertilization, pest control and minor repair or relocation of sprinkler systems. (4-6-05)

45. 02937 Pest Control, Sterilization and Herbicide Applications. A specialty contractor whose primary business includes the mixing, transportation and application of fertilizers, pesticides, herbicides, and sterilization chemicals for the control of insects, pests and weeds. (4-6-05)

46. 02955 Pipeline Cleaning, Sealing, Lining and Bursting. A specialty contractor whose primary business and expertise includes cleaning, sealing, lining and bursting pipelines. (4-6-05)

47. 02965 Cold Milling, Rumble Strip Milling, Asphalt Reclaiming and Pavement Surface Grinding. A specialty contractor whose primary business includes cold milling, rumble strip milling, asphalt reclaiming and pavement surface grinding. (4-6-05)

48. 02990 Structural Moving. A specialty contractor whose primary business includes but is not limited to raising, lowering, cribbing, underpinning and moving of buildings or structures. This does not include the alterations, additions, repairs or rehabilitation of the retained portion of the structure. (4-6-05)

49. 03200 Concrete Reinforcing Rebar Installation. A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel mesh or steel reinforcing bars or rods of any profile, perimeter or cross-section that are or may be used to reinforce concrete. (4-6-05)

50. 03300 Concrete. A specialty contractor whose primary business includes the ability and expertise to process, proportion, batch and mix aggregates consisting of sand, gravel, crushed rock or other inert materials having clean uncoated grains of strong and durable minerals, cement and water or to do any part or any combination of any thereof, in such a manner that acceptable mass, pavement, flat and other cement and concrete work can be poured, placed, finished and installed, including the placing, forming and setting of screeds for pavement or flat work. Also includes concrete sidewalks, driveways, curbs and gutters. (4-6-05)

51. 03370 Specially Placed Concrete, Concrete Pumping and Shotcreting. A specialty contractor whose primary business includes the ability and equipment necessary to deliver and install concrete, and similar materials to their final destination in buildings and structures. (4-6-05)

52. 03380 Post-Tensioned Concrete Structures or Structural Members. A specialty contractor

whose primary business is the post-tensioning of structural elements using sleeved tendons of high-strength prestressing steel. (4-6-05)

53. 03500 Gypercrete. A specialty contractor whose primary business includes the ability and expertise to mix and apply gypsum concrete. (4-6-05)

54. 03600 Concrete Grouting. A specialty contractor whose primary business includes the ability and the equipment necessary to place concrete grouts. Concrete grouts are thin, fluid, shrink resistant, mortar-like materials used for filling joints and cavities and setting and anchoring items in masonry and concrete. (4-6-05)

55. 03650 Pressure Grouting and Slab Jacking. A specialty contractor whose primary business includes pressure foundation grouting and jacking and the injection of concrete or mortar into foundations for stabilization. (4-6-05)

56. 03900 Concrete Demolition, Concrete Sawing and Cutting, Core Drilling, Joint Sealing and Hydrocutting. A specialty contractor whose primary business includes concrete cutting, drilling, sawing, cracking, breaking, chipping or removal of concrete. This category also includes the caulking or sealing of joints or cracks caused by such operations. (4-6-05)

57. 04000 Masonry. A specialty contractor whose primary business includes the installation with or without the use of mortar or adhesives of brick, concrete block, adobe units, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry. (4-6-05)

58. 04900 Chemical Cleaning and Masonry Restoration. A specialty contractor whose primary business includes the cleaning or restoration of masonry through the use of chemicals, pressure washing, sand blasting or other methods. (4-6-05)

59. 05090 Welding. A specialty contractor whose primary business causes metal to become permanently attached, joined and fabricated by the use of gases or electrical energy, developing sufficient heat to create molten metal, fusing the elements together. (4-6-05)

60. 05100 Steel Fabrication, Erection and Installation. A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel reinforcing bars, erect structural steel shapes and plates, of any profile, perimeter or cross-section, that are or may be used to reinforce concrete or as structural members for buildings and structures, including riveting, welding and rigging only in connection therewith, in such a manner that steel reinforcing and structural work can be fabricated and erected. (4-6-05)

61. 05700 Ornamental Metals. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to assemble, case, cut, shape, stamp, forage, fabricate and install sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, monel metal, stainless steel, and any other metal or any combination thereof, as have been or are now used in the building and construction industry for the architectural treatment and ornamental decoration of buildings and structures, in such a manner that, under an agreed specification, acceptable ornamental metal work can be executed, fabricated and installed; but shall not include the work of a sheet metal contractor. (4-6-05)

62. 05830 Bridge Expansion Joints and Repair. A specialty contractor whose primary business and expertise is the repair of bridge expansion joints. (4-6-05)

63. 06100 Carpentry, Framing and Remodeling. A specialty contractor whose primary business includes the placing and erection of floor systems, walls, sheeting, siding, trusses, roof decking of either wood or light gauge metal framing. This contractor also installs finish items such as running trim, sashes, doors, casing, cabinets, cases and other pre-manufactured finished items. (4-6-05)

64. 06130 Log and Heavy Timber Construction. A specialty contractor whose primary business includes the ability and expertise to build and erect log or heavy timber structures. (4-6-05)

65. 06139 Docks - Log and Wood Structures. A specialty contractor whose primary business includes

the ability and expertise to construct log and wood structured docks. (4-6-05)

66. 06200 Finish Carpentry and Millwork. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to cut, surface, join, stick, glue and frame wood and wood products, in such a manner that, under an agreed specification, acceptable cabinet, case, sash, door, trim, nonbearing partition, and such other mill products as are by custom and usage accepted in the building and construction industry as millwork and fixtures, can be executed; including the placing, erecting, fabricating and finishing in buildings, structures and elsewhere of such millwork and fixtures or to do any part or any combination of any thereof. (4-6-05)

67. 07100 Waterproofing and Dampproofing. A specialty contractor whose primary business includes the ability and expertise to apply waterproofing membranes, coatings of rubber, latex, asphaltum, pitch, tar or other materials or any combination of these materials, to surfaces to prevent, hold, keep and stop water, air or steam from penetrating and passing such materials, thereby keeping moisture from gaining access to material or space beyond such waterproofing. (4-6-05)

68. 07200 Thermal Insulation. A specialty contractor whose primary business includes the installation of any insulating media in buildings and structures for the purpose of temperature control. (4-6-05)

69. 07240 Stucco and Exterior Insulation Finish Systems (EIFS). A specialty contractor whose primary business includes the ability and expertise to install Stucco and EIFS. (4-6-05)

70. 07400 Roofing and Siding. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and to bring such surfaces to a condition where asphaltum, pitch, tar, felt, flax, shakes, shingles, roof tile, slate and any other material or materials or any combination thereof, that use and custom has established as usable for, or which material or materials are now used as, such waterproof, weatherproof or watertight seal for such membranes, roof and surfaces; but shall not include a contractor whose sole contracting business is the installation of devices or stripping for the internal control of external weather conditions. (4-6-05)

71. 07450 Siding and Decking. A specialty contractor whose primary business includes the application or installation of exterior siding, decking or gutters including wood, wood products, vinyl, aluminum and metal to new or existing buildings and includes wooden decks and related handrails. (This category does not include the construction or installation of covers or enclosures of any kind.) (4-6-05)

72. 07700 Sheet Metal Flashings, Roof Specialties and Accessories. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to select, cut, shape, fabricate and install sheet metal such as cornices, flashings, gutters, leaders, rainwater down spouts, pans, etc., or to do any part or any combination thereof, in such a manner that sheet metal work can be executed, fabricated and installed. (4-6-05)

73. 07800 Sprayed on Fireproofing. A specialty contractor whose primary business includes the mixing, transportation, and installation of fire proofing materials for buildings and structures. (4-6-05)

74. 07920 Caulking and Joint Sealants. A specialty contractor whose primary business includes the ability and expertise for installation of elastomeric and rigid joint sealants, caulking compounds, and related accessories. (4-6-05)

75. 08100 Doors, Gates, Specialty Doors and Activating Devices. A specialty contractor whose primary business is the installation, modification or repair of residential, commercial or industrial doors and door hardware. This includes but is not necessarily limited to wood, metal clad or hollow metal, glass, automatic, revolving, folding and sliding doors, power activated gates, or movable sun shades/shutters. Card activated equipment and other access control devices and any low voltage electronic or manually operated door hardware devices are also a part of this category. (4-6-05)

76. 08500 Windows, Glass and Glazing. A specialty contractor whose primary business includes the art, ability, experience, knowledge and expertise to select, cut, assemble and install all makes and kinds of glass and glass work, and execute the glazing of frames, panels, sash and doors, in such a manner that under an agreed

specification, acceptable glass work and glazing can be executed, fabricated and installed, and may include the fabrication or installation in any building or structure of frames, glazed-in panels, sash or doors, upon or within which such frames, glazed-in panels, sash or doors, such glass work or glazing has been or can be executed or installed.

(4-6-05)

77. 09110 Steel Stud Framing. A specialty contractor whose primary business includes the ability and expertise to build or assemble steel stud framing systems.

(4-6-05)

78. 09200 Lath and Plaster. A specialty contractor whose primary business includes the ability and expertise to prepare mixtures of sand, gypsum, plaster, quick-lime or hydrated lime and water or sand and cement and water or a combination of such other materials as create a permanent surface coating; including coloring for same and to apply such mixtures by use of a plaster's trowel, brush or spray gun to any surface which offers a mechanical key for the support of such mixture or to which such mixture will adhere by suction; and to apply wood or metal lath or any other materials which provide a key or suction base for the support of plaster coatings; including the light gauge metal shapes for the support of metal or other fire proof lath. Includes metal stud framing.

(4-6-05)

79. 09250 Drywall. A specialty contractor whose primary business includes the ability and expertise to install unfinished and prefinished gypsum board on wood and metal framing and on solid substates; gypsum and cementitious backing board for other finishes; accessories and trim; and joint taping and finishing.

(4-6-05)

80. 09300 Tile and Terrazzo. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and bring such surfaces to a condition where acceptable work can be executed and fabricated thereon by the setting of chips or marble, stone, tile or other material in a pattern with the use of cement, and to grind or polish the same.

(4-6-05)

81. 09500 Acoustical Treatment. A specialty contractor whose primary business includes the installation, application, alteration and repair of all types of acoustical systems, to include acoustical ceilings, wall panels, sound control blocks and curtains, hangers, clips, inserts, nails, staples, related hardware and adhesive, lightweight framing systems and related accessories (electrical excluded), installation and repair of gypsum wall board, painting, accessories, taping and texturing.

(4-6-05)

82. 09600 Flooring. A specialty contractor whose primary business includes the ability and expertise to examine surfaces, specify and execute the preliminary and preparatory work necessary for the installation of flooring, wherever installed, including wood floors and flooring (including the selection, cutting, laying, finishing, repairing, scraping, sanding, filling, staining, shellacking and waxing) and all flooring of any nature either developed as or established through custom and usage as flooring.

(4-6-05)

83. 09680 Floor Covering and Carpeting. A specialty contractor whose primary business includes the installation, replacement and repair of floor covering materials, including laminates and including preparation of surface to be covered, using tools and accessories and industry accepted procedures of the craft.

(4-6-05)

84. 09900 Painting and Decorating. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and execute the preliminary and preparatory work necessary to bring such surfaces to a condition where acceptable work can be executed thereon with the use of paints, varnishes, shellacs, stains, waxes, paper, oilcloth, fabrics, plastics and any other vehicles, mediums and materials that may be mixed, used and applied to the surface of buildings, and the appurtenances thereto, of every description in their natural condition or constructed of any material or materials whatsoever that can be painted or hung as are by custom and usage accepted in the building and construction industry as painting and decorating.

(4-6-05)

85. 09950 Sand Blasting. A specialty contractor whose primary business includes the ability and expertise to sand blast surfaces through the use of equipment designed to clean, grind, cut or decorate surfaces with a blast of sand or other abrasive applied to such surfaces with steam or compressed air.

(4-6-05)

86. 09960 Specialty Coatings. A specialty contractor whose primary business includes the surface preparation and installation of specialty coatings.

(4-6-05)

87. 10150 Institutional Equipment. A specialty contractor whose primary business includes the

installation, maintenance and repair of booths, shelves, laboratory equipment, food service equipment, toilet partitions, and such other equipment and materials as are by custom and usage accepted in the construction industry as institutional equipment. (4-6-05)

88. 10270 Raised Access Flooring. A specialty contractor whose primary business includes the installation of wood or metal-framed elevated computer-flooring systems. This does not include the structural floor on which the computer floor is supported or mezzanines. (4-6-05)

89. 10445 Non-Electrical Signs. A specialty contractor whose primary business includes the installation of all types of non-electrical signs, including but not limited to traffic delineators, mile post markers, post or pole supported signs, signs attached to structures, painted wall signs, and modifications to existing signs. (4-6-05)

90. 11001 Specialty Machinery and Equipment Installation and Servicing. A specialty contractor whose primary business is the installation, removal, modification or repair of pumps, water and waste water equipment, conveyors, cranes, dock levelers, various hoisting and material handling equipment, trash compactors and weighing scales installation and servicing. This does not include the construction of buildings and/or roof structures for this equipment. (4-6-05)

91. 11140 Petroleum and Vehicle Service Equipment, Installation and Repair. A specialty contractor whose primary business includes the installation and repair of underground fuel storage tanks used for dispensing gasoline, diesel, oil or kerosene fuels. This includes installation of all incidental tank-related piping, leak line detectors, vapor recovery lines, vapor probes, low voltage electrical work, associated calibration, testing and adjustment of leak detection and vapor recovery equipment, and in-station diagnostics. This contractor may also install auto hoisting equipment, grease racks, compressors, air hoses and other equipment related to service stations. (4-6-05)

92. 11200 Water/Wastewater and Chemical Treatment. A specialty contractor whose primary business is the supply, installation and operational startup of equipment and chemicals for chemical treatment of water, wastewater or other liquid systems. (4-6-05)

93. 11485 Climbing Wall Structures and Products. A specialty contractor whose primary business includes the ability and expertise to design, fabricate and install climbing wall structures and equipment. This does not include concrete foundations or buildings in which the climbing walls may be supported or housed. (4-6-05)

94. 12011 Prefabricated Equipment and Furnishings. A specialty contractor whose primary business includes the installation of prefabricated products or equipment including but not limited to the following: theater stage equipment, school classroom equipment, bleachers or seats, store fixtures, display cases, toilet or shower room partitions or accessories, closet systems, dust collecting systems, appliances, bus stop shelters, telephone booths, sound or clean rooms, refrigerated boxes, office furniture, all types of pre-finished, pre-wired components, detention equipment and other such equipment and materials as are by custom and usage accepted in the construction industry as prefabricated equipment. (4-6-05)

95. 12490 Window, Wall Coverings, Drapes and Blinds. A specialty contractor whose primary business includes the installation of decorative, architectural or functional window glass treatments or covering products or treatments for temperature control or as a screening device. (4-6-05)

96. 13110 Cathodic Protection. A specialty contractor whose primary business is the prevention of corrosion by using special cathodes and anodes to circumvent corrosive damage by electric current. (4-6-05)

97. 13121 Pre-Manufactured Components and Modular Structures. A specialty contractor whose primary business includes the moving, setup, alteration or repair of pre-manufactured components, houses or similar modular structures. (4-6-05)

98. 13125 Pre-Engineered Building Kits. A specialty contractor whose primary business includes the assembly of pre-engineered building kits or structures obtained from a single source. This category is limited to assembly only of pre-engineered metal buildings, pole buildings, sunrooms, geodesic structures, aluminum domes, air supported structures, manufactured built greenhouses or similar structures. This does not include any other

categories such as concrete foundations, carpentry, plumbing, heating or cooling, or electrical work. (4-6-05)

99. 13150 Swimming Pools and Spas. A specialty contractor whose primary business includes the ability to construct swimming pools, spas or hot tubs including excavation and backfill of material, installation of concrete, Gunitite, tile, pavers or other special materials used in pool construction. This category shall also include the installation of heating and filtration equipment, using those trades or skills necessary for installing the equipment, which may require other licenses including electrical and plumbing. (4-6-05)

100. 13165 Aquatic Recreational Equipment. A specialty contractor whose primary business includes the ability and expertise to design, fabricate and erect water slides and water park equipment and structures. This does not include any other categories such as concrete foundations, carpentry, plumbing, heating, cooling or electrical work. (4-6-05)

101. 13201 Circular Prestressed Concrete Storage Tanks (Liquid and Bulk). A specialty contractor whose primary business is the construction of circular prestressed concrete structures post-tensioned with circumferential tendons or wrapped circular prestressing. (4-6-05)

102. 13280 Hazardous Material Remediation. A specialty contractor whose primary business includes the ability and expertise to safely encapsulate, remove, handle or dispose of hazardous materials within buildings, including but not limited to asbestos, lead and chemicals. Contractors must be properly licensed and certified. (4-6-05)

103. 13290 Radon Mitigation. A specialty contractor whose primary business and expertise includes the detection and mitigation of Radon gas. (4-6-05)

104. 13800 Instrumentation and Controls. A specialty contractor whose primary business includes the installation, alteration or repair of instrumentation and control systems used to integrate equipment, sensors, monitors' controls and mechanical operators for industrial processes, building equipment, mechanical devices and related equipment. (4-6-05)

105. 13850 Alarm Systems. A specialty contractor whose primary business includes the installation, alteration and repair of communication and alarm systems, including the mechanical apparatus, devices, piping and equipment appurtenant thereto (except electrical). (4-6-05)

106. 13930 Fire Suppression Systems (Wet and Dry-Pipe Sprinklers). A specialty contractor whose primary business includes the ability and expertise to lay out, fabricate and install approved types of Wet-Pipe and Dry-Pipe fire suppression systems, charged with water, including all mechanical apparatus, devices, piping and equipment appurtenant thereto. Licensure with State Fire Marshal is required. (4-6-05)

107. 13970 Fire Extinguisher and Fire Suppression Systems. A specialty contractor whose primary business is the installation of pre-engineered or pre-manufactured fixed chemical extinguishing systems primarily used for protecting kitchen-cooking equipment and electrical devices. Contractor also furnishes, installs and maintains portable fire extinguishers. (4-6-05)

108. 14200 Elevators, Lifts and Hoists. A specialty contractor whose primary business includes the ability to safely and efficiently install, service and repair all elevators, lifts, hoists, including the fabrication, erection and installation of sheave beams, sheave motors, cable and wire rope, guides, cabs, counterweights, doors, sidewalk elevators, automatic and manual controls, signal systems and other devices, apparatus and equipment appurtenant to the installation. (4-6-05)

109. 15100 Pipe Fitter and Process Piping. A specialty contractor whose primary business is the installation of piping for fluids and gases or materials. This category does not include domestic water, sewage, fire protection and utilities as they are covered under other categories. (4-6-05)

110. 15400 Plumbing. A specialty contractor whose primary business includes the ability to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe, pure and wholesome water, ample in volume and of suitable temperatures for drinking, cooking, bathing, washing, cleaning, and to cleanse

all waste receptacles and like means for the reception, speedy and complete removal from the premises of all fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, including a safe and adequate supply of gases for lighting, heating, and industrial purposes. (Licensure with State Plumbing Bureau is required). (4-6-05)

111. 15510 Boiler —~~Hot Water Heating~~ and Steam Fitting. A specialty contractor who installs, services and repairs ~~power boilers, hot water heating systems and associated steam distribution fitting, including fire-tube and water tube steel power boilers and hot water heating low pressure boilers, steam fitting and piping, fittings, valves, gauges, pumps, radiators, convectors, fuel oil tanks, fuel oil lines, chimneys, flues, heat insulation and all other equipment, including solar heating equipment, associated with these systems.~~ This category is limited to work not requiring a heating, ventilating, and air conditioning (HVAC) license issued by the Division of Building Safety. (4-6-05)()

112. 15550 Chimney Repair. A specialty contractor whose primary business includes the cleaning or repair of multi-type chimneys, flues or emission control devices used to conduct smoke and gases of combustion from above a fire to the outside area. (4-6-05)

113. 15600 Refrigeration. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to construct, erect, install, maintain, service and repair devices, machinery and units for the control of air temperatures below fifty (50) degrees Fahrenheit in refrigerators, refrigerator rooms, and insulated refrigerated spaces and the construction, erection, fabrication and installation of such refrigerators, refrigerator rooms, and insulated refrigerator spaces, temperature insulation, air conditioning units, ducts, blowers, registers, humidity and thermostatic controls of any part or any combination thereof, in such a manner that, under an agreed specification acceptable refrigeration plants and units can be executed, fabricated, installed, maintained, serviced and repaired, but shall not include those contractors who install gas fuel or electric power services for such refrigerator plants or other units. (4-6-05)

114. 15700 Heating, Ventilation, and Air Conditioning (HVAC) and Warm Air Heating. A specialty contractor whose primary business includes the installation, alteration and repair of heating, ventilating, and air conditioning and warm air heating (HVAC) systems. ~~Systems may include, but are not limited to duct work, air filtering devices, water treatment devices, pneumatic or electrical controls and control piping, thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service connection to equipment served, testing and balancing refrigerant cooling and heating circuits and air handling systems.~~ Licensure by the Division of Building Safety as an HVAC contractor is required. (4-6-05)()

115. 15950 Testing and Balancing of Systems. A specialty contractor whose primary business includes the installation of devices and performs any work related to providing for a specified flow of air or water in all types of heating, cooling or piping systems. (4-6-05)

116. 16000 Electrical. A contractor engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing electrical apparatus to be operated by such current. A contractor licensed in this category may perform all work covered in categories defined in Subsection 200.118. A contractor in this category must be an electrical contractor, licensed pursuant to Section 54-1007(1), Idaho Code. (3-30-07)

117. 16700 Communication. A specialty contractor whose primary business includes the installation, alteration or repair of communication systems (voice, data, television, microwave, and other communication systems). (4-6-05)

118. 16800 Electrical Specialty Contractor. A contractor engaging in, conducting, or carrying on the business of installing, altering, or repairing special classes of electrical wiring, apparatus, or equipment. A contractor in this category must be an electrical specialty contractor, licensed pursuant to Section 54-1007(1), Idaho Code, and may perform only that work included within the specialty license. Electrical specialty categories include, but are not limited to: (3-30-07)

- a. Elevator, Dumbwaiter, Escalator or Moving-walk Electrical; (3-30-07)

- b. Sign Electrical; (3-30-07)
- c. Manufacturing or Assembling Equipment; (3-30-07)
- d. Limited Energy Electrical License (low voltage); (3-30-07)
- e. Irrigation Sprinkler Electrical; (3-30-07)
- f. Well Driller and Water Pump Installer Electrical; and (3-30-07)
- g. Refrigeration, Heating and Air Conditioning Electrical Installer. (3-30-07)

119. 18100 Golf Course Construction. A specialty contractor whose primary business includes the construction, modification, and maintenance of golf courses. This includes clearing, excavation, grading, landscaping, sprinkler systems and associated work. This does not include the construction of buildings or structures such as clubhouses, maintenance or storage sheds. (4-6-05)

120. 18200 Underwater Installation and Diving. A specialty contractor whose primary business is marine construction under and above water. (4-6-05)

121. 18300 Develop Gas and Oil Wells. A specialty contractor whose primary business includes the ability and expertise to perform oil well drilling and other oil field related specialty work. This does not include water well drilling. (4-6-05)

122. 18400 Nonstructural Restoration After Fire or Flood. A specialty contractor whose primary business includes cleaning and nonstructural restoration after fire, flood or natural disasters. (4-6-05)

123. 18600 Building Cleaning and Maintenance. A specialty contractor whose primary business includes the cleaning and maintenance of a structure designed for the shelter, enclosure and support of persons, chattels, personal and moveable property of any kind. (4-6-05)

124. 18700 Snow Removal. A specialty contractor whose primary business includes the plowing, removal and/or disposal of snow from roads, streets, parking lots and other areas of the public rights-of-way.(4-6-05)

125. 18800 Roadway Cleaning, Sweeping and Mowing. A specialty contractor whose primary business includes the clearing of trash and debris by manual or automated means from public thoroughfares. This category also includes cutting or mowing of grasses, plants, or weeds from public rights-of-way. (4-6-05)

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0701

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 54-5005(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

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 current administrative rule establishes the minimum requirements to obtain a HVAC (Heating, Ventilation, and Air Conditioning) Specialty Hearth Installer license, which includes specific education requirements. This rule change provides an alternative to those requirements for someone who has obtained the experience and knowledge from sources other than the requirements listed in the current 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: This rule change is the result of long-term, informal negotiations with the Hearth industry, and is endorsed by their representatives. As such, no formal negotiated rulemaking was conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 13th day of August 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, Idaho 83720
(208) 332-8986 phone
(208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0707-0701

024. HVAC HEARTH SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY LIMITATIONS – REQUIREMENTS.

Certification as a hearth specialty journeyman entitles the holder to install hearth appliances and the associated gas lines. ~~Requirements for HVAC~~ Hearth Specialty Journeymen are: required to meet the experience requirement and either the education or examination requirement to receive a certificate of competency. (4-11-06)()

01. Experience. Demonstrate, to the satisfaction of the board, a minimum of one (1) year experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. (4-11-06)

02. Education. Successfully complete a board approved training course(s), such as the National Fireplace Institute program and a minimum of sixty (60) hours of education in fuel gas code and piping installation methods. (4-11-06)()

03. Examination. ~~Applicants for certification as HVAC specialty journeymen must~~ Successfully complete an examination designated by the board. (4-11-06)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0702

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 54-5005(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

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 limited specialty license would allow waste oil heating equipment installers to install this equipment without obtaining a full unlimited HVAC (Heating, Ventilation, and Air Conditioning) contractor and/or journeyman license. The installer would be required to meet the licensure requirements to perform installations establishing a minimum level of competency to the public. The proposed rule changes establish a specialty HVAC license for waste oil heating equipment installers.

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: This rule change is the result of informal negotiations between the Division of Building Safety, the HVAC Board, and the waste oil heating industry. As such, no formal negotiated rulemaking was conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 13th day of August 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0702

027. HVAC WASTE OIL HEATING SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY LIMITATIONS - REQUIREMENTS.

Certification as a waste oil heating specialty journeyman entitles the holder to install non-duct connected waste oil heaters. Waste oil heating specialty journeymen are limited to the maintenance, installation, and repair of the equipment, controls, and piping directly associated with the waste oil heater, tank, and burner only. Any plumbing, electrical, ducting, venting, or associated equipment beyond the waste oil heater, tank, and burner shall be installed by others. Applicants for the waste oil heating specialty journeyman certificate of competency are required to meet the experience and examination requirements as defined in Section 027. ()

01. Experience. Demonstrate to the satisfaction of the board, a minimum of one (1) year experience making waste oil heating installations under the supervision of a qualified HVAC journeyman or HVAC Waste Oil Heating specialty journeyman. ()

02. Examination. Applicants for certification as HVAC waste oil specialty journeymen must successfully complete a waste oil burner manufacturers certification or examination as approved by the board. ()

~~0278.~~ -- 049. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0703

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 54-5005(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

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 limited specialty license would allow fuel gas piping installers to install this equipment without obtaining a full unlimited HVAC (Heating, Ventilation, and Air Conditioning) contractor and/or journeyman license. The installer would be required to meet the licensure requirements to perform installations establishing a minimum level of competency to the public. The proposed rule changes establish a specialty HVAC license for fuel gas piping installers.

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 issue has been discussed with representatives of the affected industry at several HVAC Board meetings and the rule is a result of those discussions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 13th day of August 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0703

028. HVAC FUEL GAS PIPING SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY LIMITATIONS - REQUIREMENTS.

Certification as fuel gas piping specialty journeyman entitles the holder to install fuel gas piping only and shall not make the final termination. Appliances and the associated gas piping, chimney, and vents shall be installed by others. Fuel gas specialty journeymen are required to meet the experience requirement and either the education or examination requirement of Section 028 to receive a certificate of competency. ()

01. Experience. Demonstrate, to the satisfaction of the board, a minimum of one (1) year experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. ()

02. Education. Successfully complete a board approved training course(s), of a minimum of sixty (60) hours of education in fuel gas code and piping installation methods. ()

03. Examination. Successfully complete an examination designated by the board. ()

0279. -- 049. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0704 (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 54-5005, 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 17, 2007.

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 changes in fees for HVAC permits simplify the calculation of residential permit fees by basing fees on the square footage of the residence and associated outbuildings constructed at one time. Permit fees for non-residential installations decrease in cost, but bring them into conformance with electrical which have been adjusted to match these fees, and plumbing permit fees which decrease substantially in cost versus their current costs. By adopting a common fee basis for electrical, plumbing, and HVAC permits, the programming and implementation costs associated with the new software system are minimized. The structure is also more easily understood by staff and customers alike.

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

This rulemaking provides for the calculation of, and establishes, HVAC inspection 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:

The Division of Building Safety anticipates a net decrease in permit fee revenue attributable to a decrease in fees for non-residential installations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed change has been discussed multiple times at public Board meetings over the course of the last year and no opposition has been apparent.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (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 24, 2007.

DATED this 15th day of August 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0704

051. FEES FOR HVAC INSPECTIONS.

HVAC inspection fees are to cover the cost of HVAC inspections as provided by Section 54-5017, Idaho Code; any person, partnership, company, firm, association, or corporation making an HVAC installation shall pay to the Division of Building Safety an inspection fee as provided in the following schedule: ()

01. New Residential - Single-Family Dwelling. Includes all buildings with HVAC systems being constructed on each property. ()

<u>New Residential - Single-Family Dwelling</u>	
<u>Up to 1,500 Square feet of construction</u>	- \$130*
<u>1,501 to 2,500 Square feet of construction</u>	- \$195*
<u>2,501 to 3,500 Square feet of construction</u>	- \$260*
<u>3,501 to 4,500 Square feet of construction</u>	- \$325*
<u>Over 4,500 Square feet of construction</u>	- <i>Use Subsection 051.04, Other Installations Including Industrial and Commercial</i>
* Fee is to include maximum of two (2) inspections up to 1,500 square feet, three (3) inspections 1,501 to 2,500 square feet, four (4) inspections 2,501 to 3,500 square feet, and five (5) inspections 3,501 to 4,500 square feet. Additional inspections charged at requested HVAC inspection rate of sixty-five dollars (\$65) per hour.	

02. New Residential – Multi-Family Dwellings.

<u>New Residential - Multi-Family Dwellings</u>	
<u>Duplex Apartment</u>	- \$260
<u>Three (3) or more multi-family units</u>	- \$130 per Building plus \$65 per Unit

03. Existing Residential. Sixty-five dollars (\$65) plus ten dollars (\$10) for each additional piece of HVAC equipment being installed up to a maximum of the corresponding square footage of the residential building. ()

04. Other Installations Including Industrial and Commercial. The inspection fees listed in this Section shall apply to any and all HVAC installations not specifically mentioned elsewhere in this schedule. The HVAC cost shall be the cost to the owner of all labor charges and all other costs that are incurred in order to complete the installation of any and all HVAC equipment and materials installed as part of the HVAC system. ()

a. HVAC system cost not exceeding ten thousand dollars (\$10,000): sixty dollars (\$60) plus two percent (2%) of the total HVAC system cost. ()

b. HVAC system cost over ten thousand dollars (\$10,000) but not exceeding one hundred thousand dollars (\$100,000): two hundred sixty dollars (\$260) plus one percent (1%) of the HVAC system cost exceeding ten thousand dollars (\$10,000). ()

c. HVAC system cost over one hundred thousand dollars (\$100,000): one thousand one hundred sixty dollars (\$1,160) plus one half of one percent (.5%) of the HVAC system cost exceeding one hundred thousand dollars (\$100,000). ()

d. All fees calculated under this schedule must be calculated on the total HVAC cost of the job, and this figure must be shown on the permit. ()

05. Requested Inspections A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply, with the requesting party responsible for all costs incurred in out-of-state travel. ()

06. Additional Fees and Re-Inspection Fees. A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply to: ()

a. Trips to inspect when the submitter of the permit had given notice to the Division of Building Safety that the work is ready for inspection and it is not, if the submitter has not accurately identified the work location, or if the inspector cannot gain access to make the inspection. ()

b. Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. ()

c. Each trip necessary to remove a red tag from the jobsite. ()

d. When corrections have not been made in the prescribed time, unless an extension has been requested and granted. ()

e. No permit - failure to post or send permit and required fee in the prescribed time will, at the discretion of the Division, result in the assessment of a double fee. ()

07. Plan Check Fee. Sixty-five dollars (\$65) per hour or portion thereof. ()

~~0542.~~ -- 059. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION
08.01.05 - THE IDAHO PROMISE SCHOLARSHIP PROGRAM
DOCKET NO. 08-0105-0701 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 9, 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 Sections 33-105, and Title 33 Chapter 43, 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 17, 2007.

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 docket will repeal this chapter of rules. The rules are being rewritten under Docket No. 08-0105-0702.

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 deadlines in amendments to governing law or federal programs. Changes to the statute during the 2007 legislative session to the Robert R. Lee Promise Scholarship Program will require rule amendments.

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 the statute requires the rules to be in place immediately. Also, staff from the Office of the State Board of Education worked with the Idaho students and participating institutions so they are aware of the amendment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dana Kelly at (208) 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 24, 2007.

DATED this 9th day of August, 2007.

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

IDAPA 08.01.05 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 08 - STATE BOARD OF EDUCATION
08.01.05 - IDAHO PROMISE SCHOLARSHIP PROGRAM
DOCKET NO. 08-0105-0702 (CHAPTER REWRITE)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 9, 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 Sections 33-105, and Title 33 Chapter 43, 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 17, 2007.

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 docket is a complete rewrite of this chapter of rules. The rules are being repealed under Docket No. 08-0105-0701. Changes made during the 2007 Idaho Legislative session now allow students who have been home-schooled, to apply for this scholarship. The rules need to be rewritten to modify the selection criteria to allow for the inclusion of home-schooled students. At the same time, the State Board of Education would like to clean up language, reformat the rules, and make them more user friendly.

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 deadlines in amendments to governing law or federal programs. Changes to the statute during the 2007 legislative session to the Robert R. Lee Promise Scholarship Program will require rule amendments.

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 the statute requires the rules to be in place immediately. Also, staff from the Office of the State Board of Education worked with the Idaho students and participating institutions so they are aware of the amendment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dana Kelly at (208) 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 24, 2007.

DATED this 9th day of August, 2007.

Karen L. Echeverria, Governmental Affairs Officer
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. 08-0105-0702

IDAPA 08
TITLE 01
CHAPTER 05

08.01.05 - IDAHO PROMISE SCHOLARSHIP PROGRAM

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority of the State Board of Education (the Board) under Section 33-105 and Title 33, Chapter 43, Idaho Code. (8-9-07)T

001. TITLE AND SCOPE.

01. Title. These rules shall be known as IDAPA 08.01.05, "Idaho Promise Scholarship Program." (8-9-07)T

02. Scope. These rules constitute the requirements for the Idaho Promise Scholarship Program, Promise A and Promise B. (8-9-07)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code any written interpretation of the rules of this chapter are available at the Board office. (8-9-07)T

003. ADMINISTRATIVE APPEAL.

Unless otherwise provided for in the rules of the Board or in the State Board of Education Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (8-9-07)T

004. INCORPORATION BY REFERENCE.

There are no documents to incorporate by reference pursuant to, and in accordance with Section 67-5229, Idaho Code. (8-9-07)T

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

The principal place of business of the Board is in Boise, Idaho. The mailing address is PO Box 83720, Boise, ID 83720-0037. The Board's street address is 650 West State Street, Room 307, Boise, Idaho 83702. The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. (8-9-07)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. (8-9-07)T

007. DEFINITIONS.

These definitions are applicable to this chapter only. (8-9-07)T

01. Full-Time Student. An average of at least twelve (12) credit hours per semester, including any remedial coursework. (8-9-07)T

02. Secondary School Equivalent. The instruction of students in grades nine (9) through twelve (12), provided by home schools or other educational delivery systems or by successful completion of the General Educational Development (GED) test. (8-9-07)T

03. Idaho Secondary School. Any secondary school located in the state of Idaho, including secondary schools located in border school districts attended by Idaho residents in accordance with Section 33-1403, Idaho

Code. (8-9-07)T

04. High School Record for Promise A Students. An individual's cumulative grade point average (GPA) for grades nine (9) through twelve (12), and difficulty of course load taken as certified by an official of such secondary school. (8-9-07)T

05. High School Record for Promise B Students. An individual's secondary school cumulative grade point average for grades nine (9) through twelve (12), or a composite score on the American College Test (ACT), or a sum of sub-scores on the ACT Computerized Adaptive Placement Assessment and Support System (COMPASS), or a combined score on the College Board's Scholastic Aptitude Test I (SAT). (8-9-07)T

06. Grade Point Average or GPA. Means the average earned by a student, figured by dividing the unweighted grade points earned on a scale of four point zero (4.0) by the number of credits attempted. (8-9-07)T

008. OBJECTIVES OF THE IDAHO PROMISE SCHOLARSHIP PROGRAM.

The legislature has recognized and declared that substantial economic and social benefits accrue to the state because of an educated citizenry, and that the encouragement of the State's most talented Idaho secondary school graduates to enroll in Idaho educational institutions is an important element for assuring the future leadership in the State. See Chapter 43, Title 33, Idaho Code. The Idaho Promise Scholarship Program recognizes high standards of achievement, as measured by competitive examination and high school records of graduates of public, private, or the equivalent secondary schools in Idaho who attend public or independent postsecondary institutions in Idaho. (8-9-07)T

009. MONETARY VALUE OF THE SCHOLARSHIP.

01. Monetary Value. The monetary value of each Promise A and Promise B scholarship shall be set annually by the Board in accordance with Sections 33-4307(2), (3) et seq., Idaho Code. (8-9-07)T

02. Duration. The grant covers up to one (1) educational year or equivalent for attendance at an eligible postsecondary educational institution, as defined in Section 33-4306(1), Idaho Code. (8-9-07)T

010. SELECTION AND ELIGIBILITY REQUIREMENTS OF SCHOLARSHIP RECIPIENTS.

01. Selection and Eligibility Requirements. Selection and eligibility requirements for a scholarship are based upon the provisions of the Idaho Promise Scholarship Program. Applicants for the Idaho Promise Scholarship are responsible for providing to the eligible institution in which he intends to enroll and/or the Board any and all information necessary to verify a student's eligibility for the Idaho Promise Scholarship. (8-9-07)T

02. Educational Costs. The recipient must certify that this scholarship, if awarded, will be used only for educational costs as defined in Section 33-4306, Idaho Code. (8-9-07)T

03. Enrollment. The recipient must pursue an undergraduate course of study leading to a degree, certificate, diploma, or other documentation of completion, which requires at least six (6) months, or equivalent of consecutive attendance. Furthermore, the applicant shall not enroll in an educational program leading directly to a baccalaureate degree in theology or divinity. (8-9-07)T

04. Compliance. The recipient must comply with all the provisions of the Idaho Promise Scholarship Program and these rules. (8-9-07)T

011. ADMINISTRATION.

The Board has delegated to the Board office the responsibility for the administration of the Idaho Promise Scholarship Program. As administrator, the Board office is responsible for releasing any public information regarding the Idaho Promise Scholarship Program, determination of scholarship recipients, determination of procedures for payment of scholarships to recipients, maintaining fiscal controls and accounting procedures, preparing annual reports as required, and authorizing release of all forms, affidavits, and certification necessary for the operation of the program. (8-9-07)T

012. AUTHORITY OF THE BOARD.

With the sole exception of the ability to audit the Idaho Promise Scholarship Program as set forth in Section 013 of this chapter, these rules do not grant any authority to the Board to control or influence the policies of any eligible, nonpublic postsecondary education institution or community college because those institutions accept as students recipients of the Idaho Promise Scholarship, nor do these rules require any institution to admit or, once admitted, retain a recipient of an Idaho Promise Scholarship. (8-9-07)T

013. AUDIT.

Participating institutions shall agree in advance to submit to regular, periodic audits by the legislative auditor and/or an auditor designated by the Board to ensure compliance with the statutes, rules, and policies governing the Idaho Promise Scholarship Program. (8-9-07)T

014. -- 099. (RESERVED).

100. PROMISE A SCHOLARSHIP.

The following Sections 100 through 108 specifically relate to the Idaho Promise A Scholarship. (8-9-07)T

101. PROMISE A NUMBER OF SCHOLARSHIPS.

The total number of initial and continuing scholarships will not exceed the number authorized in the Idaho Promise Scholarship Program or by the appropriation to support the program, whichever is less. The number of initial scholarships to individuals enrolled in academic and professional-technical programs shall be determined annually by the Board. If the number of qualified professional-technical applicants is not sufficient, additional awards will be given to qualified academic applicants. (8-9-07)T

102. PROMISE A PRIORITY FOR AWARD.

In the event the state of Idaho does not provide an appropriation sufficient to support the maximum number of scholarships authorized by the Idaho Promise Scholarship Program, the priority for initial and continuing scholarships will be as follows: (8-9-07)T

01. Highest Priority. Highest priority is given to continuing recipients in an order beginning with the date of the initial award. However, in the event further priority must be established among continuing recipients, the recipient's rank within the recipient's academic or professional-technical major and class will be used, with priority given to the recipient with a higher ranking within the recipient's academic or professional-technical major and class. (8-9-07)T

02. Secondary Priority. Secondary priority is given to initial scholarship recipients until the appropriation is exhausted or the maximum number of initial scholarships authorized by the Idaho Promise Scholarship Program is reached, whichever is less. (8-9-07)T

103. PROMISE A SCHEDULE FOR APPLICATION, NOTICE, AND RESPONSE TO COMMUNICATIONS.

01. Initial Applications. Completed applications for initial scholarships must be submitted to the Board office electronically no later than January 15 for the awarding of initial scholarships for such year. An applicant without electronic capabilities may submit an application on the form established by the Board through the United States Postal Service which must be postmarked no later than January 15. (8-9-07)T

02. Announcement of Award. Announcement of award of initial scholarships will be made no later than May 1 of each year, with awards to be effective July 1 of that year. (8-9-07)T

03. Deadline for Acceptance. An applicant notified that he has been selected as a recipient must respond in writing by the date specified regarding the recipient's intent to accept the award. Failure to submit a response of acceptance in writing will result in forfeiture of the scholarship. (8-9-07)T

04. Communication With State Officials. Applicants for either initial or continuing scholarships must respond by the date specified to any communication from officials of the Idaho Promise Scholarship Program Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved. (8-9-07)T

104. PROMISE A RESPONSIBILITIES OF SCHOLARSHIP APPLICANTS AND RECIPIENTS.

01. Application for Initial Scholarship. Applicants for the Idaho Promise Scholarship are responsible for any errors or omissions in the information provided on the electronic, or paper, application form or to the eligible postsecondary institutions. The Board, the Board office, any official of a secondary school in Idaho, an eligible postsecondary educational institution in Idaho, American College Testing, and any official of the Idaho Promise Scholarship Program, individually or collectively, are not responsible for any information provided by an applicant on the electronic, or paper, application form or for any errors or omissions in the information provided by the applicant. In addition, each applicant must submit the required standardized test scores. Applications submitted without the required standardized scores are incomplete and will not be considered for the scholarship. (8-9-07)T

02. Submission of Application. Applicants for initial Idaho Promise A Scholarships are responsible for submitting completed electronic application forms to the Idaho Promise Scholarship Program at the Board office. (8-9-07)T

03. Unused Scholarship Balances. Following the initial award of the scholarship, each recipient is responsible for remitting any reasonable unused scholarship balances to their institutions on behalf of the Board in the event the recipient discontinues attendance before the end of any semester, quarter, term, or equivalent. (8-9-07)T

105. PROMISE A SELECTION AND ELIGIBILITY.

Applicants who intend to enroll in academic programs at eligible Idaho postsecondary educational institutions are selected as recipients on the basis of their high school record and GPA as defined in this chapter. Applicants who intend to enroll in professional-technical programs at eligible Idaho postsecondary educational institutions are selected on the basis of performance on the ACT COMPASS exam and GPA in grades nine through twelve (9-12). To be eligible for consideration, the criteria used during the selection process for Promise A applicants are as follows: (8-9-07)T

01. High School Record and GPA. Academic applicants must have a cumulative GPA of three point five (3.5) or better on a scale of four point zero (4.0). Professional-technical applicants must have a cumulative GPA of two point eight (2.8) or better on a scale of four point zero (4.0). (8-9-07)T

02. ACT Composite Score. Academic applicants must verify an ACT composite score of twenty-eight (28) or better. (8-9-07)T

03. COMPASS Score. Professional-technical applicants must provide a copy of their ACT COMPASS report, which must include scores from the Writing Skills, Reading Skills and Mathematics sections of the COMPASS. Alternatively, professional-technical applicants may submit a copy of their ACT report, which will be equated to Compass Writing skills, Reading skills and Mathematics. Scores on the COMPASS report will be evaluated as a whole and used to rank professional-technical applicants. (8-9-07)T

04. Attendance. The applicant must declare an intention of enrolling at an eligible public or private postsecondary educational institution in Idaho (as defined in Section 33-4306(1), Idaho Code) during the academic year immediately following completion of secondary school, or its equivalent in the state of Idaho. (8-9-07)T

05. ACT, GPA and Ranking. Academic applicants are ranked against other academic applicants, and professional-technical applicants are ranked against other professional-technical applicants as follows: (8-9-07)T

a. Equal weight is given to the academic applicant's performance on the prescribed ACT measurements and the applicant's cumulative GPA. (8-9-07)T

b. Equal weight is given to the professional-technical applicant's performance on the ACT COMPASS exam, or comparable score on the ACT exam equated to Compass Writing skills, Reading skills, and Mathematics, and cumulative GPA. (8-9-07)T

106. PROMISE A CONTINUING ELIGIBILITY.

The total grant payments over a period of six (6) years to an individual may not exceed four (4) annual grants. To

remain eligible for renewal of a scholarship following the successful completion of the first or freshman year of study, the scholarship recipient must comply with all of the provisions of the Idaho Promise Scholarship Program and these rules in addition to the following requirements: (8-9-07)T

01. Credit Hours. A scholarship recipient must enroll in and complete at least an average of twelve (12) credit hours per semester during the educational year in which the recipient receives the award at an eligible postsecondary institution. (8-9-07)T

02. GPA. A scholarship recipient who does not meet the GPA and enrollment requirements at the end of the educational year will forfeit the scholarship in subsequent years. (8-9-07)T

03. Transfer of Scholarship. A scholarship recipient who transfers from one eligible postsecondary educational institution in Idaho to another must comply with all of the requirements of the Idaho Promise Scholarship Program and these rules to maintain eligibility for the scholarship. The Promise A scholarship recipient must file a statement with the Board office declaring the intention to transfer as a full-time undergraduate student in an academic or professional-technical program in an eligible postsecondary educational institution in Idaho for the succeeding year no later than sixty (60) days prior to the first day of the academic term in which the student intends to enroll. (8-9-07)T

04. Eligibility Following Interruption of Continuous Enrollment. A Promise A recipient whose continuous enrollment is interrupted for more than four (4) months for any reason but who intends to re-enroll in an eligible postsecondary educational institution in Idaho must file a letter of intent to interrupt continuous enrollment no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance. Failure to do so may result in forfeiture of the scholarship. The Board office will review each request for interruption and notify the applicant of approval or denial of the request. In addition, the recipient must file a statement with the Board office declaring the intent to re-enroll as a full-time undergraduate student in an academic or professional-technical program in an eligible postsecondary institution in Idaho for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the student intends to re-enroll. (8-9-07)T

05. Promise A Recipient. (8-9-07)T

a. Must file a statement with the Board office each year declaring the recipient's intention to continue as a full-time undergraduate student in an academic or professional-technical program at an eligible postsecondary educational institution in Idaho for the succeeding year. The Board office will provide to each eligible institution a list of anticipated recipients. The education official of each institution shall certify to the Board office the current cumulative GPA of those recipients attending said institution. (8-9-07)T

b. Must maintain high standards of performance in the recipient's academic or professional-technical major and class, with a cumulative GPA of three point zero (3.0) or better. (8-9-07)T

107. PROMISE A PAYMENT OF SCHOLARSHIPS.

01. Award. Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to or on behalf of a scholarship recipient. (8-9-07)T

02. Promise A Payments. Payments are made in the name of the recipient and will be sent to a designated official at the postsecondary educational institution in which the recipient is enrolled. The official must certify the applicant's eligibility, and if eligible, transmit the payment to the recipient within a reasonable time following receipt of the payment. (8-9-07)T

108. PROMISE A ADDITIONAL RESPONSIBILITIES OF POSTSECONDARY INSTITUTIONS.

01. Certification of Enrollment. The officials must certify that scholarship recipients have actually enrolled as full-time students. Such certification for Promise A recipients must be submitted when requested by Board office staff, and no later than thirty (30) days following the end of the regular enrollment period. (8-9-07)T

02. Withdrawal from Institution. In the event a scholarship recipient withdraws from the college, school, or university, the officials at the college, school, or university must certify to the Board office that the recipient has withdrawn. Furthermore, in the event a recipient withdraws from all classes during a semester, quarter, term, or equivalent, the officials must remit to the Board office the amount of any tuition or fees refunded as a result of the withdrawal, after first having returned funds to federal aid programs as required by federal statute, up to the full amount of the scholarship received for the current semester, quarter, term, or equivalent. The following additional provisions apply if a scholarship recipient withdraws from the institution: (8-9-07)T

a. The refund to the Promise Scholarship Program shall be calculated as follows: refund due to the student from the educational institution minus any refund applied towards federal financial aid repayments, as calculated in accordance with the Federal Return of Title IV Funds Formula, provides the refund due the Promise Scholarship, up to the total amount the student received for the term. The educational institution must remit the balance if any as provided in Section 108 of this chapter. (8-9-07)T

b. In the event of extreme hardship as determined by the professional judgment of the designated official at the educational institution, a student may request to the educational institution a waiver of remittance. Members of the National Guard or Reserves who have been ordered to active military duty are eligible for a waiver of remittance. Each institution shall provide to the Board office an accounting of all waivers granted. (8-9-07)T

c. In the event that the full amount of the student's scholarship for the semester, quarter, term, or equivalent is returned to the state, that semester, quarter, term, or equivalent shall not be considered in determining the student's eligibility for renewal. (8-9-07)T

03. Annual Educational Costs. The officials must certify that the Idaho Promise A Scholarship award does not exceed the average educational costs for students who will be enrolled during the succeeding year. (8-9-07)T

109. -- 199. (RESERVED).

200. PROMISE B SCHOLARSHIP.
The following Sections 200 through 207 specifically relate to the Idaho Promise B Scholarship. (8-9-07)T

201. PROMISE B NUMBER OF SCHOLARSHIPS -- PRIORITY FOR AWARD.
The total number of scholarships awarded to Promise B students will be determined annually by the Board based on the number of eligible students as certified by the eligible postsecondary institutions, the individual award amount, and the availability of funds. (8-9-07)T

202. PROMISE B PRIORITY FOR AWARD.
In the event that the state of Idaho does not provide an appropriation sufficient to award the maximum amount of the scholarship authorized by Section 33-4307(3)(a), Idaho Code then recipients of Promise A Scholarships shall not be eligible to receive Promise B Scholarships. In addition, the Board may proportionally decrease the amount of the Promise B Scholarship so as to provide an award to all eligible students. (8-9-07)T

203. PROMISE B SCHEDULE FOR APPLICATION, NOTICE, AND RESPONSE TO COMMUNICATIONS.
Applicants for either initial or continuing scholarships must respond by the date specified to any communication from officials of the Idaho Promise Scholarship Program. Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved. (8-9-07)T

204. PROMISE B SELECTION AND ELIGIBILITY.
A student who first enrolls in an eligible Idaho postsecondary institution and who meets the eligibility requirements of the Idaho Promise B Scholarship as verified by the designated financial aid or scholarship office of the eligible institution will receive the Promise B Scholarship. Criteria used to determine eligibility includes the following: (8-9-07)T

01. Grade Point Average for Promise B Scholarship. Applicants must have a cumulative secondary

school (grades nine (9) through twelve (12)) GPA of three point zero (3.0) or better on a scale of four point zero (4.0). (8-9-07)T

02. ACT or Equivalent Score. Applicants who do not have a three point zero (3.0) grade point average must verify a composite score of twenty (20) or better on the ACT assessment, or a corresponding score on the SAT I as established on the ACT/SAT I equivalency table, or at least a combined score of one hundred ninety-five (195) from the Writing Skills, Reading Skills and Algebra areas of the ACT COMPASS examination. (8-9-07)T

03. Completion Requirements. The applicant must have completed secondary school or its equivalent in the state of Idaho as defined in Section 007 of this chapter. (8-9-07)T

04. Age Requirements. An individual must be under the age of twenty-two (22) on July 1 of the educational year in which the initial award is made. (8-9-07)T

05. Full-Time. An individual must enroll as a full-time student. (8-9-07)T

205. PROMISE B CONTINUING ELIGIBILITY.

The total grant payments over a period of four (4) years to an individual may not exceed two (2) annual payments. To remain eligible for renewal of a scholarship following the successful completion of the first or freshman year of study, the scholarship recipient must comply with all of the provisions of the Idaho Promise Scholarship Program and these rules in addition to the following requirements: (8-9-07)T

01. Credit Hours. A scholarship recipient must enroll in and complete at least an average of twelve (12) credit hours per semester during the educational year in which the recipient receives the award at an eligible postsecondary institution. (8-9-07)T

02. GPA. A scholarship recipient who does not meet the GPA and enrollment requirements at the end of the educational year will forfeit the scholarship in subsequent years. (8-9-07)T

03. Transfer of Scholarship. A scholarship recipient who transfers from one eligible postsecondary educational institution in Idaho to another must comply with all of the requirements of the Idaho Promise Scholarship Program and these rules to maintain eligibility for the scholarship. (8-9-07)T

04. Eligibility Following Interruption of Continuous Enrollment. A Promise B recipient whose continuous enrollment is interrupted for more than four (4) months for any reason but who intends to re-enroll in an eligible postsecondary education institution in Idaho must contact the financial aid office at the eligible postsecondary institution to request reinstatement of remaining Promise B eligibility. The student must have met the eligibility requirements prior to the interruption of continuous enrollment, and may not attend a non-eligible institution in the interim. The student must notify the financial aid office at the eligible postsecondary institution within the first semester (term) of resumed attendance regarding reinstatement of eligibility in order to qualify for continued Promise B scholarship eligibility. (8-9-07)T

05. Promise B Recipient. The Promise B recipient must maintain high standards of performance by achieving and maintaining a two point five (2.5) cumulative GPA on a four point zero (4.0) system. (8-9-07)T

206. PROMISE B PAYMENT OF SCHOLARSHIPS.

Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to or on behalf of a scholarship recipient. (8-9-07)T

01. Promise B Payments. Payments will be sent to a designated official at the eligible postsecondary educational institution based upon the estimated number of recipients expected to enroll at the institution as provided for in Section 207 of this chapter. The official must transmit the payment to the recipients within a reasonable time following receipt of the payment. Transmittal of funds for the scholarship will be in accordance with a schedule established by the Board office. The schedule will also establish dates by which the following activities will occur to ensure accurate and timely payments to the postsecondary institutions on behalf of recipients. (8-9-07)T

02. Number of Estimated Recipients. The postsecondary educational institutions must submit to the Board office the estimated number of Idaho Promise B fall term and spring term recipients each educational year. (8-9-07)T

03. Semester Payment Schedule. The Board office shall distribute scholarship funds to a designated official at the postsecondary educational institutions at least fifteen (15) days prior to the start of the fall and spring academic terms. (8-9-07)T

04. Mid-Semester Adjustments. The postsecondary educational institution must submit mid-semester scholarship adjustment information, including refunds resulting from withdrawal from the institution, which reports the actual number of students who were eligible to receive the Promise B Scholarship to the Board office each academic term of the educational year. (8-9-07)T

a. Where the postsecondary educational institution has underestimated the number of scholarship recipients, the Board office will send an additional payment on behalf of those students to the educational institutions each academic term of the educational year. (8-9-07)T

b. Where the postsecondary educational institution has overestimated the number of fall recipients, the Board office will deduct the amount overpaid to the educational institution from its spring semester payment. Spring semester overpayments to the educational institutions must be refunded to the Board office prior to the end of the educational year. (8-9-07)T

05. Year-End Final Report. The postsecondary educational institution must submit to the Board office prior to the end of the educational year a final report indicating for each term the number of students that received an Idaho Promise B scholarship and the number of Promise B scholarships that were matched by the institution. Any outstanding overpayment made to the institution during the educational year must accompany the final year-end report. (8-9-07)T

207. PROMISE B ADDITIONAL RESPONSIBILITIES OF POSTSECONDARY INSTITUTIONS. In addition to other responsibilities provided for in this chapter, officials of Idaho postsecondary educational institutions in which scholarship recipients have enrolled are responsible for the following: (8-9-07)T

01. Number of Promise B Recipients. The total number of grants to Promise B students will be determined annually. (8-9-07)T

a. The officials of eligible Idaho postsecondary educational institution are responsible for identifying eligible Promise B recipients in accordance with Promise Scholarship Program and these rules. (8-9-07)T

b. The officials must provide to the Board office an estimation of the number of Idaho Promise B recipients enrolled at the postsecondary institution during each of the corresponding academic terms. (8-9-07)T

02. Annual Report to Board. The officials must report annually to the Board office the number of students for each term receiving a Promise B award and the number of awards that were matched by the institution. (8-9-07)T

03. Annual Educational Costs. The officials must certify that the Idaho Promise B Scholarship award does not exceed the average educational costs for students who will be enrolled during the succeeding year. (8-9-07)T

04. Certification of Enrollment. The officials must certify that scholarship recipients have actually enrolled as full-time students. Such certification for Promise B recipients must be submitted within thirty (30) days following the end of the regular enrollment period. (8-9-07)T

05. Withdrawal from Institution. In the event a scholarship recipient withdraws from the educational institution, the officials at the educational institution must certify to the Board office that the recipient has withdrawn. Furthermore, in the event a recipient withdraws from all classes during a semester, quarter, term, or equivalent, the officials must remit to the Board office the amount of any tuition or fees refunded as a result of the withdrawal, after

first having returned funds to federal aid programs as required by federal statute, up to the full amount of the scholarship received for the current semester, quarter, term, or equivalent. The following additional provisions apply if a scholarship recipient withdraws from the institution: (8-9-07)T

a. The refund to the Promise Scholarship Program shall be calculated as follows: refund due to the student from the educational institution minus any refund applied towards federal financial aid repayments, as calculated in accordance with the Federal Return of Title IV Funds Formula, provides the refund due the Promise Scholarship, up to the total amount the student received for the term. The educational institution must remit the balance if any as provided in Section 207 of this chapter. (8-9-07)T

b. In the event of extreme hardship as determined by the professional judgment of the designated official at the educational institution, a student may request to the educational institution a waiver of remittance. Members of the National Guard or Reserves who have been ordered to active military duty are eligible for a waiver of remittance. Each institution shall provide to the Board office an accounting of all waivers granted. (8-9-07)T

c. In the event that the full amount of the student's scholarship for the semester, quarter, term, or equivalent is returned to the state, that semester, quarter, term, or equivalent shall not be considered in determining the student's eligibility for renewal. (8-9-07)T

208. -- 299. (RESERVED).

300. APPEAL PROCEDURE.

Any Promise B applicant or recipient adversely affected by a decision made under provisions of this chapter may appeal using the institution's financial aid appeals process. Any Promise A applicant, recipient, or eligible postsecondary educational institution, or any Promise B applicant who desires further consideration of an appeal after the institutional decision has been reached, may appeal to the Board. The applicant, recipient, or eligible postsecondary educational institution must submit the appeal in writing no later than thirty (30) days following notice of the decision, and the written statement must include a statement of the reason the applicant, recipient, or eligible postsecondary educational institution believes the decision should be changed. The appeal must be submitted to the president of the Board in care of the Board office, which must acknowledge receipt of the appeal within seven (7) days. The president of the Board may or may not agree to review the action, or may appoint a subcommittee of three (3) persons, including at least one (1) financial aid administrator at an eligible postsecondary educational institution in Idaho. (8-9-07)T

01. Transmittal to Subcommittee. If the appeal is transmitted to the subcommittee, the subcommittee will review the appeal and submit a written recommendation to the president of the Board within fifteen (15) days from the time the subcommittee receives the appeal document. The applicant, recipient, or institution initiating the appeal will be notified by the chairperson of the subcommittee of the time and place when the subcommittee will consider the appeal and will be allowed to appear before the subcommittee to discuss the appeal. (8-9-07)T

02. Subcommittee Recommendations. Following the subcommittee's decision, the president of the Board will present the subcommittee's recommendation to the Board at the next regularly scheduled meeting of the Board. The applicant, recipient, or eligible postsecondary educational institution initiating the appeal may, at the discretion of the president of the Board, be permitted to make a presentation to the Board. (8-9-07)T

03. Board Decision. The decision of the Board is final, binding, and ends all administrative remedies, unless otherwise specifically provided by the Board. The Board will inform the applicant, recipient, or eligible postsecondary educational institution in writing of the decision of the Board. (8-9-07)T

301. -- 999. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0707

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 9, 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(s) 33-105 and 33-107, Idaho Code.

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

October 12, 2007 - 1:00 p.m.
Len B. Jordan Building
Conference Room 201
650 West State Street, 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:

This rulemaking would rescind the requirement for district accreditation. Accreditation would no longer be mandatory for elementary schools, K-8. Required state accreditation for secondary schools would be managed through the Northwest Association of Accredited Schools.

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:

This rule will confer a Benefit on school administrators, school board members, parents and students. This rule focuses on the priority need of Idaho's secondary schools to be regionally accredited; minimizes duplication of accrediting efforts between the State of Idaho and the NAAS; reduces state costs by making full use of the services of the NAAS; dispenses with the redundancy of district accreditation for Idaho's many small, rural districts; reduces the burden of state-required paperwork at the district and school levels' and provides local districts with increased opportunities for local autonomy and flexibility in meeting the needs of their student populations by allowing accreditation to be optional at the elementary levels.

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 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 will provide a benefit to the state in cost savings and staff time, and school districts will have an opportunity to comment at scheduled public hearing and during the comment period.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shannon Page, (208) 332-6947.

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 24, 2007.

DATED this 17th day of August, 2007.

Karen L. Echeverria
Governmental Affairs Officer
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. 08-0202-0707

140. ACCREDITATION.

All public secondary schools, servng any grade(s) 9-12, and districts in Idaho will be state accredited. State accreditation is voluntary for elementary schools, grades K-8, and private and parochial schools. (Section 33- 119, Idaho Code) (4-6-05)(8-9-07)T

~~01- **District Strategic Plan.** School districts will develop and implement a minimum three to five year strategic plan focused on the improvement of student performance. The district strategic plan (DSP) will be monitored by a representative review team established by each district's administration and board of trustees, which will recommend revision of goals as necessary and provide regular reports on implementation of the plan to the district's trustees.~~ (4-6-05)

~~021. **Continuous School Improvement Plan.** Schools will develop continuous school improvement plans (CSIP) focused on the improvement of student performance.~~ (4-6-05)(8-9-07)T

~~03- **Plan Alignment and Focus.** District strategic plans (DSP) and continuous school improvement plans (CSIP) will align and focus on improving school and staff capacity (structure/resource allocation/teacher skill sets) to increase student achievement.~~ (4-6-05)

~~042. **Standards.** Districts and schools will meet state-approved the accreditation standards as adopted by the State Board of Education of the Northwest Association of Accredited Schools.~~ (4-6-05)(8-9-07)T

~~053. **Reporting.** Accreditation reports on DSP/CSIP and the attainment of standards will be submitted, as requested, to the State Accreditation Committees, whose members are approved by the State Board of Education and representative of each region of the state. The Committees will review the reports and make recommendations to the State Board of Education for accreditation status. Accreditation status may be appealed. An annual accreditation report will be submitted to the State Board of Education.~~ (4-6-05)(8-9-07)T

~~06- **Elements of Thoroughness.** The requirements for thoroughness referenced in Section 33-1612, Idaho Code will be met.~~ (4-6-05)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0708

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 10, 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(s) Idaho Code §33-105 and §33-107, Idaho Code.

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

**October 12, 2007 -- 1:00 p.m.
Len B. Jordan Building,
Conference Room 201
650 West State Street, 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:

Allows a three (3) year interim certificate to be issued to any Idaho-trained educator whose certificate has expired. Also allows educators holding current certificates from recognized, accredited foreign institutions of education to be issued a three (3) year interim certificate.

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:

This rule will confer a Benefit on K-12 Teachers and Administrators. This rule responds to statewide challenges in meeting federal guidelines for Highly Qualified status and teacher shortages. It creates greater flexibility for Idaho-trained educators to return to the teaching field and for those trained in accredited, foreign institutions.

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.

This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 24, 2007.

DATED this 17th day of August, 2007.

Karen L. Echeverria
Governmental Affairs Officer
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. 08-0202-0708

015. IDAHO INTERIM CERTIFICATE.

01. Issuance of Interim Certificate. The State Department of Education is authorized to issue a ~~non-renewable~~, three-year (3) interim certificate to those applicants who hold a valid certificate/license from another state or other entity that participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement. An interim certificate is nonrenewable except under extenuating circumstances.
(3-16-04)(8-10-07)T

02. Foreign Institutions. An educator having graduated from a foreign institution that is listed in the Accredited Degree-Granting Institutions section of the "Accredited Institutions of Postsecondary Education" and having a valid/current teaching certificate/license from the country or province in which the foreign institution is located, may be issued a non-renewable, three (3) year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules.
(8-10-07)T

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0704

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, Idaho Code and Public Law 107-110 ("No Child Left Behind") Section 1111.b.3.C.

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 17, 2007.

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 rulemaking will add updated definitions that reflect current terminology and usage, eliminate redundant and outdated language, update the rules to include all assessments in Idaho's state system.

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 rulemaking is non controversial in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra DeKlotz at (208) 332-1580.

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 24, 2007.

DATED this 9th day of August, 2007.

Karen L. Echeverria, Governmental Affairs Officer
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. 08-0203-0704

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule:

(3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education on November 1, 2006. Copies of the document can be found on the State Board of Education website at

<http://www.boardofed.idaho.gov/index.asp> <http://www.boardofed.idaho.gov/saa/wLimits.asp>. (3-30-07)()

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> <http://www.boardofed.idaho.gov/IELA/IELAdocs.asp>. (3-30-07)()

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> <http://www.boardofed.idaho.gov/IELA/IELAdocs.asp>. (3-30-07)()

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement 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> <http://www.boardofed.idaho.gov/lep/documents/IELACutScores.pdf>. (3-30-07)()

05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards. Achievement 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/index.asp> <http://www.boardofed.idaho.gov/saa/achievement.asp>. (3-30-07)()

06. The Idaho Alternative Assessment Extended Content Standards. The Idaho Alternative Assessment Extended Content Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov/saa/altAssessStandards.asp>. ()

07. The Idaho Alternative Assessment Extended Achievement Standards. Alternative Assessment Extended Achievement Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/saa/altAssessStandards.asp>. ()

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (6-14-07)T

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (6-14-07)T

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS A - G.

01. Achievement Standards. Define “below basic,” “basic,” “proficient,” and “advanced” achievement levels on the Idaho Standards Achievement Tests (ISAT) and “beginning,” “advanced beginning,” “intermediate,” “early fluent” and “fluent” on the Idaho English Language Assessment (IELA) by setting scale score cut points. These cut scores are paired with descriptions of how well students are mastering the material in the content standards. These descriptions are called performance level descriptors or PLDs, and are provided by performance level, by content area, and by grade. ()

02. Advanced Opportunities. Are defined as Advanced Placement courses, Dual Credit courses, Tech

Prep, or International Baccalaureate programs. (4-11-06)

023. Advanced Placement® (AP) - <http://www.collegeboard.com>. The Advanced Placement Program is administered by the College Board. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. (4-11-06)

034. All Students. All students means all public school students, grades K-12. (4-11-06)

045. Alternative Assessment (Other Ways of Testing). Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)

056. Assessment. The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)

067. Assessment Standards. (~~4-5-00~~)

~~a-~~ Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing”; (4-5-00)

~~b-~~ *Measures of student performance.* (~~4-5-00~~)

078. Authentic. Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)

089. Basic Educational Skills Training. Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)

109. Classic Texts. Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)

11. Content Standards. Describe the knowledge, concepts, and skills that students are expected to acquire at each grade level in each content area. ()

102. Context (of a Performance Assessment). The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)

113. Cooperative Work Experience. Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)

124. Criteria. Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)

135. Cues. Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as

prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)

146. “C” Average. A combined average of courses taken on a four (4) point scale with “C” equal to two (2) points. (4-11-06)

157. Decode. (4-5-00)

a. To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)

b. To change communication signals into messages, as to decode body language. (4-5-00)

168. Dual Credit. Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student’s permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. (4-11-06)

179. Emergent Literacy. Development of the association of print with meaning that begins early in a child’s life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

1820. Employability Skills. Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

219. Entry-Level Skills. The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

202. Evaluation (Student). Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

243. Experiential Education (Application). Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

224. Exploratory Experience (Similar to a Job Shadow). An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is a school-based activity that simulates the workplace. (4-5-00)

235. Fluency. The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

246. Genre (Types of Literature). A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

257. Graphophonic/Graphophonemic. One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

008. DEFINITIONS H - S.

01. Interdisciplinary or Integrated Assessment. Assessment based on tasks that measures a student’s ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or problem. (4-5-00)

02. International Baccalaureate (IB) - <http://www.ibo.org/ibo/index.cfm>. Administered by the

International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. (4-11-06)

03. Laboratory. A laboratory science course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts. (4-11-06)

04. Learning Plan. The plan that outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals. (4-11-06)

05. Narrative. Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

06. Norm-Referenced Assessment. Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

07. On-Demand Assessment. Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

08. Performance Assessment. Direct observation of student performance or student work and professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

09. Performance-Based Assessment. The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

10. Performance Criteria. A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

11. Phonics. Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

12. Portfolio. A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

13. Print Awareness. In emergent literacy, a learner's growing awareness of print as a system of meaning, distinct from speech and visual modes of representation. (4-5-00)

14. Professional-Technical Education. Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

15. Proficiency. Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

16. School-to-Work Transition. A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

17. Service Learning. Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

18. Skill Certificate. Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

19. Standards. Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and ~~performance achievement~~ standards. (~~4-5-00~~)(____)

20. Standardization. A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

21. Standards-Based Education. Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

22. Structured Work Experience. A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

23. Student Learning Goals (Outcomes). Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

102. INSTRUCTIONAL REQUIREMENTS.

All schools will deliver a core of instruction and advisement programs (see Section 108, Guidance Programs) for each student in elementary schools, middle schools/junior high and high schools. (4-5-00)

01. Standards. All students will meet standards established locally (at a minimum, the standards of the state) through rigorous accountability, which include challenging examinations, demonstrations of achievement, and other appropriate tests and measures. (4-5-00)

~~02. Curriculum Guides.~~ *The State Department of Education Curriculum Guides and any Achievement*

~~Standards Samples of Application may be used voluntarily and are designed to assist school districts as they develop educational programs and achievement standards. Notwithstanding the above, the State Division of Professional Technical Education will prepare curriculum guides and instructional aids for professional technical education programs in the public schools. (Section 33-118, Idaho Code) (3-15-02)~~

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-30-07)

a. (Effective for all students that graduate prior to January 1, 2013.) Each students 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. (3-30-07)

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. (3-30-07)

02. Achievement Standards. Each student shall meet locally established subject area ~~achievement~~ standards (using state content 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 Grade 10~~ 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~~ shall be given an opportunity to demonstrate proficiency of the ~~achievement content~~ 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. Districts with alternate measures on file with the Board on the effective date of this rule must re-submit their plans to the Board. Alternate mechanisms must be re-submitted to the Board when changes are made in their plans. (~~4-11-06~~)()

a. Before ~~appealing to the school district or LEA for~~ entering 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. (~~3-30-07~~)(_____)

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. (3-30-07)

a. Twenty-nine (29) semester credits are required as listed in Subsections 107.03 through 107.08; and (3-30-07)

b. A minimum of seventeen (17) elective credits. (3-30-07)

c. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. (3-30-07)

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. (3-30-07)

03. Secondary Language Arts and Communication. Eight (8) credits required that includes four (4) years of instruction in English, each year will consist of language study, composition, and literature. One (1) credit of instruction in communications including oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the state high school communications standards requirements. (3-30-07)

04. Mathematics. (3-30-07)

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. (3-30-07)

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: (3-30-07)
- i. Two (2) semesters of Algebra I or courses that meet Algebra I standards as approved by the State Department of Education; (3-30-07)
 - ii. Two (2) semesters of Geometry or courses that meet Geometry standards as approved by the State Department of Education; and (3-30-07)
 - iii. Two (2) semesters of mathematics of the student's choice. (3-30-07)
 - iv. Two (2) semesters of the required six (6) credits of mathematics must be taken in the last year of high school. (3-30-07)
- 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. (3-30-07)
- 05. Science.** (Effective for all students that enter the ninth grade in the fall of 2009 or later.) Six (6) credits required. (3-30-07)
- a.** Secondary sciences shall include instruction in the following areas: (3-30-07)
 - i. Biology; (3-30-07)
 - ii. Physical science or chemistry; and (3-30-07)
 - iii. Earth, space, environment, or approved applied science. (3-30-07)
 - b.** Four (4) credits of courses outlined in Subsection 107.05.a. must be laboratory based. (3-30-07)
 - 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. (3-30-07)
- 06. 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)
- 07. 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)
- 08. 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. (3-30-07)
- 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). (3-30-07)
- 11. Assessment.** A student must achieve a proficient or advanced score on the Grade 10 ISAT in the

tenth, eleventh, or twelfth grade. 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~~ completes another measure ~~approved~~ established by a school district or LEA and received by the Board 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.d.** Calendar year of 2007. A student is not required to achieve a proficient or advanced score on the ISAT if:~~ (3-30-07)

~~(1)i. A student took the ISAT and was within three (3) RIT points of proficiency;~~ (4-11-06)

~~(2)ii. A student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test;~~ (4-11-06)

~~(3)iii. 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)iv. 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)v. A student appeals for another measure approved by the school district or LEA as outlined in Subsection 105.03.~~ (4-11-06)

~~**ii.e.** Calendar year of 2008 and subsequent classes. A student is not required to achieve a proficient or advanced score on the ISAT if:~~ (3-30-07)

~~(1)i. A student has an IEP that outlines alternate requirements for graduation or adaptations are~~

recommended on the test; (3-30-07)

~~(2)~~ii. 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; (3-30-07)

~~(3)~~iii. 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 (3-30-07)

~~(4)~~iv. A student appeals for another measure approved by the school district or LEA as outlined in Subsection 105.03. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. ~~A statewide student assessment program consisting of standardized achievement testing and performance appraisal activities in the fundamental basic skills will be conducted annually.~~ The State Board of Education will provide oversight for all components of the comprehensive assessment program. ~~The State Department of Education will be responsible for the administration of assessment efforts as provided for by the State Board of Education.~~ (3-15-02)(____)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-02)
- a. Measure and improve student achievement; (3-15-02)
 - b. Assist classroom teachers in designing lessons; (3-15-02)
 - c. Identify areas needing intervention and remediation, and acceleration; (3-15-02)
 - d. Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)
 - e. Inform parents and guardians of their child's progress; (3-15-02)
 - f. Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)
 - g. Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)
 - h. Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the Direct Writing Assessment (DWA), the Direct Mathematics Assessment (DMA), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, and the Idaho Standards Achievement Tests (ISAT), and the Idaho Alternate Assessment. (3-20-04)(____)

04. Testing Population. All students in Idaho public schools, grades kindergarten through ~~ten~~ twelve (K-~~10~~12), are required to participate in the comprehensive assessment program approved by the State Board of

Education and funded. (4-6-05)()

a. All students who are eligible for special education shall participate in the statewide assessment program. (4-6-05)

b. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (4-6-05)

c. Limited English Proficient (LEP) students, as defined in Subsection 112.03.d.iv., who receive a score ~~in the low range on the State Board of Education approved language acquisition proficiency test~~ below the fluent level on the Idaho English Language Assessment and have an Education Learning Plan (ELP), shall be given the ISAT with accommodations or adaptations as outlined in the ELP. Students can be categorized as LEP students for two (2) years after testing proficient on the language proficiency test and exiting the LEP program. LEP students who do not have an ELP or a language acquisition score will be given the regular ISAT without accommodations or adaptations. LEP students who are enrolled in their first year of school in the United States may take ~~an English Proficiency test approved by the Board~~ the IELA in lieu of the reading/language usage ISAT, but will still be required to take the math ISAT with accommodations or adaptations as determined by the language proficiency score and ELP. Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.03. However, such LEP students are not required to be counted for AYP purposes in determining proficiency, as described in Subsection 112.02. (4-11-06)()

05. Scoring and Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (5-3-03)

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.l. Each assessment will be comprehensive of and aligned to the Idaho State ~~Achievement~~ Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program. (4-6-05)()

a. Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (3-15-02)()

b. Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (3-15-02)()

c. Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

e. Grade 4 - Direct Math Assessment, National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

f. Grade 5 - Direct Writing Assessment, Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

g. Grade 6 - Direct Math Assessment, Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

h. Grade 7 - Direct Writing Assessment, Grade 7 Idaho Standards Achievement Tests, Idaho Alternate

Assessment, Idaho English Language Assessment. (3-20-04)()

i. Grade 8 - Direct Math Assessment, National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

j. Grade 9 - Direct Writing Assessment, Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

k. Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-20-04)()

l. Grade 11 – Idaho English Language Assessment. ()

m. Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-11-06)()

n. *Students who achieve a proficient or advanced score on a portion or portions of the ISAT, or the Idaho Alternate Assessment, offered in the Spring of their tenth grade year or later are not required to continue taking that portion or portions. (3-20-04)()

07. Comprehensive Assessment Program Schedule. (5-3-03)

a. The Idaho Reading Indicator will be administered in accordance with Section 33-1614, Idaho Code. (3-15-02)

b. The Direct Math Assessment and the Direct Writing Assessment will be administered in December in a time period specified by the State Department of Education. (3-15-02)

c. The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)

d. The Idaho Standards Achievement Tests will be administered twice annually in the Fall and Spring in a time period specified by the State Board of Education. (5-3-03)

e. The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. ()

f. The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. ()

08. Costs Paid by the State. Costs for the following testing activities will be paid by the state: (4-1-97)

a. All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)

b. Statewide distribution of all assessment materials; (3-15-02)

c. Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program; and (3-15-02)

d. Implementation, processing, scoring and distribution of prescribed reports for the Direct Writing Assessment and the Direct Mathematics Assessment. (3-15-02)

09. Costs of Additional Services. Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)

10. Services. The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements.

(3-15-02)

11. Test Security, Validity and Reliability. Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ ~~the same~~ security measures in protecting statewide assessment materials from compromise ~~as they use to safeguard other formal assessments.~~ Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel.

(~~3-20-04~~)()

a. All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window.

(3-20-04)

b. The ISAT will be refreshed each year to provide additional security beginning with grades four (4) eight (8) and ten (10) in 2007. Items will be refreshed for grades three (3) and seven (7) in 2008; grades five (5) and six (6) in 2009; and grades two (2) and nine (9) in 2010.

(3-20-04)

c. Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho ~~Achievement~~ Content Standards.

(~~3-20-04~~)()

12. Demographic Information. ~~Accurate~~ Demographic information ~~will be~~ must be submitted as required for each test to assist in interpreting test results. It may include but is not ~~be~~ limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status).

(~~5-3-03~~)()

13. Dual Enrollment. For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following:

(3-15-02)

a. The Idaho Standards Achievement Tests (grades 2-9 and High School).

(5-3-03)

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired.

(4-6-05)

i. Language Arts/Communications.

(3-15-02)

ii. Math.

(3-15-02)

iii. Science.

(3-15-02)

iv. Social Studies.

(3-15-02)

v. Health.

(3-15-02)

vi. Humanities.

(3-15-02)

112. ACCOUNTABILITY.

The provisions in this section apply for the purposes of meeting the “No Child Left Behind” Act and the state of Idaho accountability requirements.

(3-20-04)

01. ISAT Student Achievement Levels. There are four (4) levels of student achievement for the ISAT: “Below Basic,” “Basic,” “Proficient,” and “Advanced.” Definitions for these levels of student achievement are

adopted by reference in Subsection 004.05. (3-20-04)()

~~a. Advanced: Exceeds Standards. The student demonstrates thorough knowledge and mastery of skills that allows him/her to function independently above his current educational level. (3-20-04)~~

~~i. The student demonstrates a comprehensive understanding of all relevant information. (3-20-04)~~

~~ii. The student demonstrates comprehension and understanding of knowledge and skills above his/her grade level. (3-20-04)~~

~~iii. The student can perform skills or processes independently without significant errors. (3-20-04)~~

~~b. Proficient: Meets Standards. The student demonstrates mastery of knowledge and skills that allow him/her to function independently on all major concepts and skills at his/her educational level. (3-20-04)~~

~~i. The student demonstrates a comprehensive understanding of all information relevant to the topic, at level. (3-20-04)~~

~~ii. The student can perform skills or processes independently without significant errors. (3-20-04)~~

~~c. Basic: Below Standards. The student demonstrates basic knowledge and skills usage but cannot operate independently on concepts and skills at his/her educational level. Requires remediation and assistance to complete tasks without significant errors. (3-20-04)~~

~~i. The student has an incomplete knowledge of the topic or misconceptions about some information. (3-20-04)~~

~~ii. The student requires assistance and coaching to complete tasks without errors. (3-20-04)~~

~~d. Below Basic: Critically Below Standards. The student demonstrates significant lack of skills and knowledge and is unable to complete basic skills or knowledge sets without significant remediation. (3-20-04)~~

~~i. The student has critical deficiencies of relevant knowledge of topic or misconceptions about some information. (3-20-04)~~

~~ii. The student cannot complete any skill set without significant assistance and coaching. (3-20-04)~~

02. IELA Language Proficiency Levels. There are five (5) levels of language proficiency for students testing on the Idaho English Language Assessment: "Beginning," "Advanced Beginning," "Intermediate," "Early fluent," and "Fluent." Definitions for these levels of language proficiency are adopted by reference in Subsections 004.02 and 004.04. ()

023. Adequate Yearly Progress (AYP). (3-20-04)

a. Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. (3-20-04)

b. The State Department of Education will make AYP determinations for schools and districts each year. Results will be given to the districts no later than one (1) month prior to the first day of school. (3-20-04)

c. The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-20-04)

034. Adequate Yearly Progress (AYP) Definitions. For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. (3-20-04)

a. Full Academic Year (continuous enrollment). (3-20-04)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the end of the state approved spring testing administration period will be included in the calculation to determine if the school achieved AYP. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. Students who are expelled but return to another school in the same district are considered continuously enrolled to determine the district AYP. (4-6-05)

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the end of the state approved spring testing administration period will be included when determining if the school district has achieved AYP. (4-6-05)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the end of the state approved spring testing administration period will be included when determining if the state has achieved AYP. (4-6-05)

b. Participation Rate. (3-20-04)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-20-04)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (4-6-05)

(2) Students who are absent for the entire state-approved testing window because of a significant medical emergency are exempt from taking the ISAT if such circumstances prohibit them from participating. (4-6-05)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-20-04)

c. Schools. (3-20-04)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-20-04)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (4-6-05)

iii. A high school is any school that contains grade twelve (12). (3-20-04)

iv. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-20-04)

d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-20-04)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-20-04)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-20-04)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-20-04)

iv. Limited English Proficient - individuals who score in the low range on the state-approved language proficiency test and meet one of the following criteria: (4-6-05)

(1) Individuals whose native language is a language other than English; or (4-6-05)

(2) Individuals who come from environments where a language other than English is dominant; or (4-6-05)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (4-6-05)

e. Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must maintain or make progress toward the target each year. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

f. Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

05. Annual Measurable Achievement Objectives (AMAOs). Local school districts are responsible for ensuring district progress of Limited English Proficient (LEP) students in their acquisition of English. Progress and proficiency are measured by the IELA and determined based on three (3) AMAOs: ()

a. Annual increases in the percent or number of LEP students making progress in acquiring English language proficiency; ()

b. Annual increases in the percent or number of LEP students attaining English language proficiency by the end of the school year; and ()

c. Each school district must make Adequate Yearly Progress for LEP students on the spring ISAT. ()

(BREAK IN CONTINUITY OF SECTIONS)

115. DATA COLLECTION.

The State Department of Education will collect the required information from participating school files for state and federal reporting and decision-making. The enrollment collection will contain information about the enrollment of the student attributes such as active special education, Limited English Proficient (LEP), migrant, grade level, gender, race, and free/reduced lunch status. The collection will be done in mid-October, early February, and May (end of the testing window). Each participating school is required to verify and assure the accuracy of the data submitted in the files *to assure accuracy*. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

~~999~~171. GIFTED AND TALENTED PROGRAMS.

01. Definitions. The following definitions apply only to Section ~~999~~ 171 of these rules.

~~(3-30-07)~~(_____)

- a.** Department. State Department of Education. (3-30-07)
- b.** District. Local school district. (3-30-07)
- c.** Gifted/talented children. Those students who are identified as possessing demonstrated or potential abilities that give evidence of high performing capabilities in intellectual, creative, specific academic or leadership areas, or ability in the performing or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities Section 33-2001, Idaho Code. (3-30-07)
- d.** Governing gifted and talented educational requirements. Sections 33-201, 33-2001, 33-2003, Idaho Code. (3-30-07)
- 02. Legal Compliance.** The State Department of Education and districts shall comply with all governing gifted and talented education requirements. (3-30-07)
- 03. District Plan.** Each school district shall develop and write a plan for its gifted and talented program. The plan shall be submitted to the Department no later than October 15, 2001. The plan shall be updated and submitted every three (3) years thereafter and shall include: (3-30-07)

 - a.** Philosophy statement. (3-30-07)
 - b.** Definition of giftedness. (3-30-07)
 - c.** Program goals. (3-30-07)
 - d.** Program options. (3-30-07)
 - e.** Identification procedures. (3-30-07)
 - f.** Program evaluation. (3-30-07)
- 04. Screening.** The district's process for identifying gifted and talented students shall include the following steps: (3-30-07)

 - a.** The district shall screen all potentially gifted and talented students to ensure they have an opportunity to be considered; and (3-30-07)
 - b.** The district shall assess those students meeting the screening criteria and gather additional information concerning their specific aptitudes and educational needs; and (3-30-07)
 - c.** The district shall match student needs with appropriate program options. (3-30-07)
- 05. Assessment.** Placement decisions shall not be determined by a single criterion (for instance, test scores, other measurement, teacher recommendation, or nomination). The district's identification process shall use multiple indicators of giftedness with information obtained through the following methods and sources: (3-30-07)

 - a.** Procedures for obtaining information about students shall include formal assessment methods, such as group and individual tests of achievement, general ability, specific aptitudes and creativity. (3-30-07)
 - b.** Procedures for obtaining information about students shall also include informal assessment methods, such as checklists, rating scales, pupil product evaluations, observations, nominations, biographical data, questionnaires, interviews and grades. (3-30-07)
 - c.** Information about students shall be obtained from multiple sources, such as teachers, counselors, peers, parents, community members, subject area experts, and the students themselves. (3-30-07)

06. **Administration.** The district shall designate a certificated staff person to be responsible for development, supervision, and implementation of the gifted and talented program. (3-30-07)

~~17-2.~~ -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

201. -- ~~20999.~~ (RESERVED).

~~210. ACHIEVEMENT STANDARDS DEFINITION.~~

~~Idaho State Board of Education's Definition of an Achievement Standard: "Specific subject criteria which, when measured, show a specific level of content knowledge and demonstrated application." (3-30-01)~~

~~211. KINDS OF STANDARDS.~~

~~(Normally discussed when trying to define standards.)~~

~~01. Content Standards. Content standards are statements that clearly define what students should know and be able to do in various subject areas and at different points in their education. (4-5-00)~~

~~02. Performance Standards. Performance standards provide concrete examples and explicit definitions of how well students must learn the material represented by content standards. (4-5-00)~~

~~03. Assessment Standards. Assessment is the measurement of what a student knows and is able to do, usually expressed in terms of progress toward a standard. (4-5-00)~~

~~212. -- 214. (RESERVED).~~

~~215. ABBREVIATIONS.~~

~~01. Language Arts/Communications. (4-5-00)~~

~~a. ICTE. Idaho Council of Teachers of English. (4-5-00)~~

~~b. NCTE. National Council of Teachers of English. (4-5-00)~~

~~e. IRA. International Reading Association. (4-5-00)~~

~~d. ICIRA. Idaho Council of the International Reading Association. (4-5-00)~~

~~02. Science Committee Acronyms. (4-5-00)~~

~~a. NSTA. National Science Teachers Association. (4-5-00)~~

~~b. ISTA. Idaho Science Teachers Association. (4-5-00)~~

~~e. AAAS. American Association for the Advancement of Science. (4-5-00)~~

~~d. NRC. National Research Council. (4-5-00)~~

~~216. GLOSSARY OF MATHEMATICAL TERMS.~~

~~01. Appropriate Technology. May include paper and pencil, graph paper, simple calculators, graphing calculators, computers with spreadsheets, or even specialized mathematics software such as Geometer's Sketchpad or Maple. It is the decision of school districts and teachers to determine which tools are most appropriate for both~~

~~instruction and application. (4-5-00)~~

~~02. **Arithmetic Operations.** Basic operations on numbers, including addition, subtraction, multiplication, division, and exponentiation (raising a number to a power). (4-5-00)~~

~~03. **Function.** One (1) of the most important and fundamental concepts in mathematics. Functions have inputs (domain values) and transform these inputs into unique outputs (range values). The function is the process or rule that accomplishes this transformation. Functions may be described by: (4-5-00)~~

~~a. Tables of values, such as a table of heights with associated idealized weights. (4-5-00)~~

~~b. Graphs, such as a chart depicting a company's daily closing stock price over the last year. (4-5-00)~~

~~c. Calculator function buttons, where the domain (input) value is the number keyed in, the function is performed by the circuitry in a chip, and the range (output) value is the number read in the display after pressing the function button. (4-5-00)~~

~~d. Spreadsheet functions, where the domain (input) value is the content of the cell referenced, the function is the subprogram that actually performs the computation, and the range (output) value is the number that is computed. (4-5-00)~~

~~e. An explicit formula, such as the squaring function " $f(x)=x^2$ " which takes any input " x " and transforms it by multiplying " x " by itself. (4-5-00)~~

~~04. **The Language of Algebra.** Algebra is that branch of mathematics dealing with the study of number systems. The common number systems include the natural numbers, the integers (includes zero and the negatives of the counting numbers), the rational numbers (fractions), the real numbers (decimals), and the complex numbers (like $2-4i$). Algebra uses letters and other symbols to describe general properties of numbers, to specify conditions placed on them, or to describe relationships between them. (4-5-00)~~

~~05. **Linear Equation.** An equation, in which the variables (unknowns) occur only to the first power, multiplied only by constants. For example, the equations:-~~

THIS GRAPHIC IS BEING DELETED

$$4x - 3 = \sqrt{2} \quad \text{and} \quad \frac{1}{2}x - 7y = 11$$

~~are linear in one (1) and two (2) variables respectively, while: $x^2 + 5x + 7 = 0$ and $xy = 1$ are nonlinear equations. A linear equation in two (2) variables has a graph that is a straight line in the coordinate plane. A linear equation in three (3) variables has a graph which is a plane in 3-space. (4-5-00)~~

~~06. **Linear Programming.** A mathematical technique to solve optimization problems involving linear objective functions (such as maximizing profit or minimizing cost) subject to linear inequality constraints (such as amount of ingredients available, the relative proportions used, and relative costs). (4-5-00)~~

~~07. **Linear System.** A system of more than one (1) equation or inequalities, each using the same variables, and each linear. A solution to the system is any assignment of values to the variables that makes every equation or inequality simultaneously true. The complete solution is the set of all possible solutions. (4-5-00)~~

~~08. **Mathematical Model.** Equations, inequalities, functions, or other mathematical expressions that model a real-world process. Realistic mathematical models are increasingly important in the modern world, especially with the increased use of powerful computers. Many processes, which formerly could only be studied by expensive laboratory experiments, can now be studied as realistic mathematical models. (4-5-00)~~

~~09. **Mean, Median, and Mode.** Three (3) common ways to measure the center of a set of numerical data. The mean is the arithmetic average of the data. The median is the middle value of the sorted data set with an odd number of items or the average of the middle two (2) values when the data contains an even number of items. The~~

~~mode is the most common data value, if it exists. Of the three (3), the mean and median are more useful and frequently used. In any particular application, whether the mean or median is more appropriate depends on the data set and the intended use.~~ (4-5-00)

~~10. **Order of Operations.** The commonly accepted rules used for reading algebraic expressions or evaluating arithmetic expressions.~~ (4-5-00)

~~a. Evaluate expressions inside parentheses first.~~ (4-5-00)

~~b. Within the same level of parentheses:~~ (4-5-00)

~~i. Evaluate exponents first;~~ (4-5-00)

~~ii. Evaluate products and/or quotients next;~~ (4-5-00)

~~iii. Evaluate sums and/or differences last.~~ (4-5-00)

~~e. Examples: $2 * 32 + 4 = 22$, $2(32 + 4) = 2 * 13 = 26$, $(2 * 3)^2 + 4 = 62 + 4 = 40$.~~ (4-5-00)

~~11. **Probability.**~~ (4-5-00)

~~a. The branch of mathematics dealing with chance. The experimental model is one (1) illustration of probability. Imagine an experiment with outcomes. An event is a collection of outcomes. The probability of an event is the proportion of the experiments that result in an outcome in the event. The probability of an event is always a number between zero (0) and one (1). Events with probabilities near one (1) are very likely to occur, while those with probabilities near zero (0) are very unlikely.~~ (4-5-00)

~~b. Example. To estimate the probability that a randomly selected, adult American female is between sixty (60) inches and sixty-six (66) inches tall, select an adult American female at random and measure her height. If one thousand (1,000) women are selected and measured, the probability would be the proportion of the experiments that selected a woman between those heights.~~ (4-5-00)

~~12. **Pythagorean Theorem.** A theorem from Euclidean geometry about right triangles. The hypotenuse of a right triangle is the side opposite the right angle. The legs are the other two (2) sides. The theorem states that the square of the hypotenuse is the sum of the squares of the legs.~~ (4-5-00)

~~13. **Quadratic Equation.** An equation, which can be reduced to the form $ax^2 + bx + c = 0$, with a, b, and c constants, where a does not equal 0.~~ (4-5-00)

~~14. **Scaling Factor.** The ratio between the corresponding dimensions of two (2) figures of the same shape.~~ (4-5-00)

~~15. **Statistics.** The branch of mathematics dealing with collecting, analyzing, and reasoning from data. The process may involve collecting all of the possible data (a census), or it may involve collecting a subset or sample of the data. The analysis may involve organizing, condensing, calculating summary measurements (statistics), or constructing graphical displays. These descriptive tools help draw conclusions about the real world from which the data originated. When appropriate, probability models provide the framework for attaching a measure of confidence to the conclusions.~~ (4-5-00)

~~16. **Standard Deviation.** A measure of the spread of a set of numerical data. If a data set has a relatively large standard deviation, then the data is very spread out. If the standard deviation is small, the data is highly clustered.~~ (4-5-00)

~~17. **Tolerance.** The acceptable range of accuracy of a measurement, or the allowable error in a given measurement.~~ (4-5-00)

~~217.— 998. (RESERVED).~~

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0705

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 33-107, Idaho Code.

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

**October 12, 2007 -- 1:00 p.m.
Len B. Jordan Building, Conference Room 201
650 West State Street, Boise, ID 83720**

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

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

The Idaho State Board of Education adopted additional math and science graduation requirements that include two credits of Algebra I, two credits of Geometry and two additional math credits taken in a student's senior year of high school. The current Idaho math standards reflect general standards for ninth and tenth grade math but do not reflect standards for the additional courses required for the graduating class of 2013. These new standards will meet the needs of Idaho students and school districts to address the additional requirements.

Content standards for Algebra I, Geometry, Algebra II, Math Analysis, Math Analysis of Personal Finance, Technical Math, Pre-calculus – Algebra, Pre-Calculus – Trigonometry AP Calculus and AP Statistics are incorporated by reference into this 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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. Teachers from most of Idaho's school districts participated in writing standards for Algebra I, Geometry, Algebra II, Math Analysis, Math Analysis of Personal Finance, Technical Math, Pre-calculus – Algebra, Pre-Calculus – Trigonometry AP Calculus and AP Statistics in order to meet the needs of Idaho students and school districts to address the additional graduation requirements set forth by the Board of Education in 2006.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cindy Johnstone, (208) 332-6923.

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 24, 2007.

DATED this August 23, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0705

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education on November 1, 2006 and Math Standards as of August 23, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (~~3-30-07~~)(____)

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>. (3-30-07)

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>. (3-30-07)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement 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>. (3-30-07)

05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards. Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (6-14-07)T

06. The Idaho Alternative Assessment Extended Content Standards. The Idaho Alternative Assessment Extended Content Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (11-1-06)T

07. The Idaho Alternative Assessment Extended Achievement Standards. Alternative Assessment Extended Achievement Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (11-1-06)T

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (6-14-07)T

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (6-14-07)T

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.04 - RULES GOVERNING PUBLIC CHARTER SCHOOLS
DOCKET NO. 08-0204-0701
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, 33-5203, and 33-5213, 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 17, 2007.

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:

Public charter school petitioners are not currently required to address or respond to findings of the State Department of Education's sufficiency review, which is intended to ensure legal sufficiency of the petition prior to its submission to an authorized chartering entity.

The proposed rule will require public charter school petitioners to address or respond to the findings of the State Department of Education's sufficiency review and include said responses, in writing, with the petition upon submission to an authorized chartering entity.

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 this rulemaking is being done based on a recommendation from a report issued by the Office of Performance Evaluations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tamara Baysinger at (208) 332-1583.

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 24, 2007.

DATED this 9th day of August, 2007.

Karen L. Echeverria
Governmental Affairs Officer
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. 08-0204-0701

205. REVIEW OF PETITIONS.

01. Initial Review of Petition. Prior to submitting a petition with an authorized chartering entity, petitioners shall submit six (6) copies of the proposed draft petition to the Department, which shall review the proposed draft petition for the purpose of determining whether it was prepared in accordance with the instructions furnished by, and in the format required by, the Board, and contains the information required by Section 33-5205, Idaho Code. (4-11-06)

02. Timeframe for Initial Review. The Department shall complete the initial review of the proposed draft petition as soon as reasonably practicable after the date the proposed draft petition is received by the Department, but not later than thirty (30) days after receipt. (4-11-06)

03. Notification of Findings After Initial Review. The Department shall notify the petitioners promptly in writing describing the results of the initial review of the proposed draft petition, and, if applicable, identify any deficiencies in the proposed draft petition. (4-11-06)

04. Written Response to Initial Review. Petitioners shall include a copy of the Department's initial review of the proposed draft petition, and a written response to the findings of such review, with the petition upon submission to an authorized chartering entity. Deficiencies in the petition identified by the Department's initial review shall be addressed in the written response. ()

045. Substantive Review of Petition. The substantive review of the merits of a petition by an authorized chartering entity shall be for the purpose of determining whether petitioners have demonstrated compliance with Title 33, Chapter 52, Idaho Code. (4-11-06)

056. Timeframe for Substantive Review. An authorized chartering entity must comply with the procedural requirements described in Section 33-5205, Idaho Code. (4-11-06)

a. Unless a petition is referred to the Commission as authorized by Section 33-5205(1)(c)(iii), Idaho Code, and as discussed in Subsection 206.01 of these rules, an authorized chartering entity must hold a public hearing not later than sixty (60) days after receipt of the petition, for the purpose of considering the merits of the petition, as well as the level of employee and parental support for the proposed public charter school. In the case of a petition being reviewed by the Commission, the public hearing must also include any oral or written comments, if any, from an authorized representative of the school district in which the proposed public charter school would be physically located regarding the merits of the petition and any potential impacts on the school district. (4-11-06)

b. An authorized chartering entity must make a decision on whether to approve the petition within sixty (60) days after the date of the public hearing on the merits of the petition. (4-11-06)

c. The authorized chartering entity may unilaterally determine to extend the date by which a decision is required to be made up to an additional sixty (60) days if it determines the petition is incomplete. (4-11-06)

d. The Commission and the petitioners may mutually agree to extend the date by which a decision is required to be made on the merits of the petition up to an additional ninety (90) days. (4-11-06)

067. If Approved, Charter Is Subject to Limitations on Number of New Charters. (4-11-06)

a. If a petition is approved, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to approve the charter. It shall be the responsibility of the petitioners to provide the Board with this written notice of approval, and with a copy of the final approved petition, in accordance with the procedure described in Section 100 of these rules. (4-11-06)

b. The approval of a charter by an authorized chartering entity does not provide the petitioners with any right to begin educational instruction at the public charter school during a particular school year, or in accordance with the terms and conditions of the charter, as such approval is conditioned upon the limitations on the number of new public charter schools that may be approved to begin educational instruction for a school year, as described in Section 100 of these rules. (4-11-06)

078. If Denied, Petitioners May Appeal. (4-11-06)

a. If a petition is denied, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to deny the charter. The written decision shall include all of the reasons for the denial, and shall also include a reasoned statement that states or explains the criteria and standards considered relevant by the authorized chartering entity, the relevant contested facts relied upon, and the rationale for the decision based on the applicable statutory provisions and factual information presented to the authorized chartering entity. (4-11-06)

b. The petitioners may appeal the decision of the authorized chartering entity, in accordance with the procedures described in Sections 401 through 402 of these rules. (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0701

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 17, 2007.

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:

Clarify to whom the rules apply; update and add definitions; clarify existing rules; update minimum vision standards; establish how long a medical exam is valid; allow open campus for select basic academies; allow vo-tech program coordinators to be eligible for certification; allow Idaho POST-certified peace officers to maintain their certifications while employed as tribal officers with federally recognized Indian tribes within Idaho; remove limitation on college credits; establish challenge procedure for vo-tech law enforcement program graduates.

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 and approval 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 24, 2007.

DATED this 23rd day of August, 2007.

Jeffrey J. Black
Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-0701

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," IDAPA 11, Title 11, Chapter 01. (3-15-02)

02. Scope. These rules constitute the minimum standards of training, education, employment, and certification of peace officers, ~~and~~ county detention officers, juvenile detention officers, juvenile probation officers, correction officers, and adult probation and parole officers in Idaho. (3-15-02)()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, ~~this agency has~~ any written statements which might pertain to the interpretation of the rules of this chapter; or to the documentation of compliance with the rules of this chapter. ~~The document is~~ are available for public inspection and copying at cost at the Idaho State Police, Peace Officer Standards and Training ~~Office~~, 700 South Stratford Drive, P.O. Box 700, Meridian, Idaho, 83680-0700. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

~~IDAPA 11.11.01 incorporates by reference the Law Enforcement Code of Ethics as revised in 1989 by the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, VA 22314. There are no documents that have been incorporated by reference into this rule.~~ (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-30-07)

03. 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; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-5-00)()

04. 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; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-5-00)()

05. Applicant. Any person applying to participate in a POST training program or applying for POST certification. ()

06. Basic Adult Probation and Parole Academy. A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. ()

07. Basic Correction Academy. A basic course of instruction for Correction Officers as recognized by POST Council. ()

08. Basic Detention Academy. A basic course of instruction for Detention Officers as recognized by POST Council. ()

09. Basic Juvenile Detention Academy. A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. ()

10. Basic Juvenile Probation Academy. A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. ()

11. Basic Patrol Academy. A basic course of instruction for Patrol Officers as recognized by POST Council. ()

0512. 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)

0613. 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. (3-30-07)

14. Correction Standards and Training Council. An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. ()

15. Council. The Idaho Peace Officer Standards and Training Council. ()

0716. 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)

0817. 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 (Willful 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)()

~~18~~. **Field Training.** Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

~~19~~. **Full Time.** Employment of ~~eighty one hundred sixty~~ (8160) hours or more per month for ninety (90) consecutive calendar days. (7-1-93)()

~~20~~. **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)

~~21~~. **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)

~~22~~. **Juvenile Detention Center.** A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. ()

~~23~~. **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)()

~~24~~. **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)()

~~25~~. **Juvenile Training Council.** An advisory group to the POST Council that is composed of 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 and Juvenile Probation Academies. ()

~~26~~. **Law Enforcement Profession.** As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an ~~peace officer~~ employee of a police or law enforcement agency that 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; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that 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; an 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; 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. (~~3-30-07~~)()

~~1627~~. **Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

~~1728~~. **Part Time.** Employment of less than ~~eighty (80)~~ one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (~~7-1-93~~)()

~~29~~. **Part-Time Juvenile Detention Officer.** Any employee of a juvenile detention center that 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. ()

~~1830~~. **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)

~~1931~~. **POST.** The Idaho Peace Officer Standards and Training Program. (7-1-93)

~~32~~. **POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. ()

~~2033~~. **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)

~~2134~~. **Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (~~7-1-93~~)()

~~2235~~. **Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer ~~who does not meet the definition of on a full-or~~ part-time ~~peace officer~~ basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (~~4-2-03~~)()

~~236~~. **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)

~~2437~~. **School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

~~2538~~. **Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

~~2639~~. **Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

~~2740~~. **Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

030. GENERAL AND INCIDENTAL POWERS AND DUTIES.

Besides those enumerated previously (those in Title 19, Chapter 51, Idaho Code), the duties of the Council shall be to do and perform all other acts and things required by law or which may be necessary to the full discharge of the duties

of said Council, and shall include, but not be limited to the following: (4-5-00)

01. Issue Certification. To issue certification to law enforcement officers when they meet the requirements as established by the POST Council. (4-5-00)()

02. Maintain Files. To maintain files on all certified officers, instructors, and schools; and furnish information from files upon request in accordance with the Idaho Public Records Law. (4-5-00)()

03. Maintain Records. To receive and maintain as trustees for the state of Idaho in accordance with the Idaho State Police and POST retention schedules all physical properties and records which shall come into the possession of the Council by virtue of its existence. (4-5-00)()

04. Establish Committees. To establish such committees, both permanent and temporary, as may be necessary to more fully carry out the administrative duties of the Council. (4-5-00)()

05. Elect Vice-Chairman. Pursuant to Idaho Code, the Council shall elect a Vice-Chairman annually from among its membership. (4-5-00)()

06. Adopt Rules. To adopt and amend rules and procedures consistent with law for the internal management of POST and the operation of a law enforcement training program. (4-5-00)()

07. Assist Departments. Upon request, to assist departments and directors of training in administration and training problems encountered in complying with the various aspects of the Act as well as the ultimate objective of the Act, i.e., raising the level of competence of law enforcement officers in Idaho. (4-5-00)()

08. Study Training Methods. To study law enforcement training methods to enable POST to provide current and updated training. (4-5-00)()

09. Consult and Cooperate With Agencies. To consult and cooperate with recognized law enforcement agencies or educational institutions concerned with law enforcement training. (4-5-00)()

10. Make Recommendations. To make recommendations concerning any matter within its jurisdiction. (4-5-00)()

~~**11. Executive Director.** There shall be established in the Idaho State Police a classified position of Executive Director of the Idaho Peace Officer Standards and Training Council. (4-5-00)~~

~~**a.** The Executive Director will be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council. (4-5-00)~~

~~**b.** The Executive Director shall have supervision over the employees and other persons necessary in carrying out the functions of POST. (4-5-00)~~

~~**c.** For administrative purposes, the Executive Director and his staff will be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters. (4-5-00)~~

~~**d.** The Executive Director shall be selected by the POST Council subject to approval of the Director of the Idaho State Police from the approved register established by the Idaho Division of Human Resources after competitive testing. (4-5-00)~~

11. Grant Additional Time to Complete POST Training and Certification. The Council, for good cause and in writing, may grant additional time to complete POST training and certification. Good cause may include, but is not limited to, sickness or physical disability of officer or immediate family member, cancellation of Basic Academy, natural disaster, or reapplication to the Academy after failing or being unable to complete a previous Basic Academy Session. ()

~~12. **Examining Board.** The Chairman of the POST Council will recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Division of Human Resources.~~

~~(4-5-00)~~

~~13. **Compensation.** Except for the Executive Director of the POST Council, the members of the Council receive no compensation from POST for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their functions, as prescribed by law.~~

~~(4-5-00)~~

~~14. **Council Resignations.** Any Council member who ceases to qualify as such shall at once notify the Governor and Chairman in writing. Any Council member who desires to terminate their services shall notify the Governor and Chairman in writing of their intentions.~~

~~(4-5-00)~~

~~15. **Contested Cases.** Rules of Procedure in contested cases shall be governed by the Idaho Administrative Procedures Act.~~

~~(4-5-00)~~

~~16. **Additional Time to Complete POST Training and Certification.** The Council, for good cause and in writing, may grant additional time to complete POST training and certification. Good cause may include, but is not limited to, sickness or physical disability of officer or immediate family member, cancellation of Basic Academy, natural disaster, or reapplication to the Academy after failing or being unable to complete a previous Basic Academy Session.~~

~~(4-5-00)~~

031. EXECUTIVE DIRECTOR.

There shall be established in the Idaho State Police a classified position of Executive Director of the Idaho Peace Officer Standards and Training Council.

()

01. Selection of Executive Director.

()

a. The Chairman of the POST Council shall recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Division of Human Resources.

()

b. The Executive Director shall be selected by the POST Council subject to approval of the Director of the Idaho State Police from the approved register established by the Idaho Division of Human Resources after competitive testing.

()

02. Under POST Council's Direction. The Executive Director will be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council.

()

03. Supervision Over Employees. The Executive Director shall have supervision over the employees and other persons necessary in carrying out the functions of POST.

()

04. Administration. For administrative purposes, the Executive Director and his staff will be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters.

()

032. POST COUNCIL.

01. Compensation. Except for the Executive Director of the POST Council, the members of the Council receive no compensation from POST for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their functions, as prescribed by law.

()

02. Council Resignations. Any Council member who ceases to qualify as such shall at once notify the Governor and Chairman in writing. Any Council member who desires to terminate their services shall notify the Governor and Chairman in writing of their intentions.

()

03. Contested Cases. Rules of Procedure in contested cases shall be governed by the Idaho

Administrative Procedures Act. ()

0343. 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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

0324. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

041. THE RECORDS SYSTEM.

01. Training File. The Idaho Peace Officer Standards and Training Council will maintain a training file on all Idaho law enforcement officers. Officer certifications granted and certified training schools attended by officers will be recorded in these files. (4-5-00)

02. Notification of Employment/Termination. ~~It will be the responsibility of the law enforcement~~ The agency head of any agency whose officers are required to attend a POST Basic Training Academy shall notify the Council of all presently employed officers every January and July. The names of all officers hired after submission of the original list must be submitted to the Council within fifteen (15) days of employment. The termination of an officer's employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council. (~~4-6-05~~)()

03. Training Record. A training record listing all certified courses an officer has completed, the hours credit, and other pertinent data will be kept along with the officer's file. (4-5-00)

04. Other Law Enforcement Personnel. A file on other law enforcement personnel may be maintained. This file will contain records for other law enforcement persons who successfully complete POST-certified courses. (4-5-00)

05. Instructors. Names of certified instructors will be maintained. (4-5-00)

06. Instructors and Schools. A list of approved instructors and schools will be maintained. (4-5-00)

042. PROCEDURE.

01. Application. Each individual officer may apply for certification when they have met the requirements. When they are certified by the Council, this is entered into their file. (Refer to "Certification of Peace, Detention, Juvenile Detention, and Juvenile Probation Officers.") (~~4-5-00~~)()

02. Roster. School coordinators will furnish to the Council a "Course Attendance Roster" on the appropriate form designated by the Council upon the completion of each certified training school. (Refer to "School")

Formation and Certification ~~of Schools.~~) (4-5-00)()

043. FORMS FOR RECORD USE.

All forms used or referred to in this manual are available upon request from: Idaho Peace Officer Standards & Training Council, P.O. Box 700, Meridian, Idaho 8368-0700 and from POST's website at <http://www.idaho-post.org>. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

050. MINIMUM STANDARDS FOR EMPLOYMENT.

Every peace, county detention, juvenile detention, ~~or~~ and juvenile probation officer shall meet the requirements in Sections 050 through 0634. (4-2-03)()

~~01. **Citizenship.** Shall be a citizen of the United States. (3-15-02)~~

~~02. **Education Requirements.** (3-20-97)~~

~~a. Graduation from high school or having passed the General Educational Development Test indication of high school graduation. The military or veterans equivalent of high school graduation is also acceptable. (3-15-02)~~

~~b. Documentary evidence of satisfaction of this requirement shall be in the form of a high school diploma, high school transcript, GED certificate, or GED test report form. A college transcript indicating the successful completion of a minimum of fifteen (15) academic credits is also acceptable. In unusual circumstances, the Council may accept other documentation, and in such cases the decision of the Council shall be final. (3-15-02)~~

~~03. **Experience Requirements.** (3-20-97)~~

~~a. Not less than two (2) years of responsible work experience following high school graduation (or when the applicant would have graduated). (3-20-97)~~

~~b. The work experience requirement can be complied with by two (2) years of any combination of military service, gainful employment, education, or any other productive activity. (4-2-03)~~

051. CITIZENSHIP.

The applicant shall be a citizen of the United States. ()

01. Documentation. Proof of citizenship shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following: ()

a. Birth certificate issued by the city, county, or state and filed within one (1) year of birth; ()

b. Naturalization Certificate; ()

c. U.S. passport; ()

d. Consular Report of Birth Abroad or Certification of Birth; or ()

e. Certificate of Citizenship. ()

052. EDUCATION.

The applicant shall be a high school graduate or have earned a GED certificate. ()

01. Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following: ()

- a.** High school diploma: ()
- b.** GED certificate: ()
- c.** High school transcript: ()
- d.** GED test report form; or ()
- e.** College transcript indicating the successful completion of a minimum of fifteen (15) academic credits. ()

053. EXPERIENCE.

The applicant shall have a minimum of two (2) years of any combination of responsible work experience, military service, education, or any other productive activity ()

054. CHARACTER.

The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct which may endanger the safety and welfare of the public. (4-2-03)

0525. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

02. Conviction. The term "conviction" shall include: (4-2-03)

- a.** Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)
- b.** A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; (3-15-02)
- c.** The payment of a fine; (3-15-02)
- d.** A plea of guilty, nolo contendere; or (3-15-02)
- e.** A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (3-15-02)

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-2-03)

a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant's agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)

b. An applicant shall be rejected who has been convicted of a DUI during the two (2) years immediately preceding application. No waivers shall be granted by the POST Council for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Executive Director provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Executive Director shall have the discretion to refer the application to the POST Council. (3-15-02)

c. An applicant with any other misdemeanor conviction may be accepted upon approval of the POST Executive Director provided the conviction occurred more than two (2) years prior to application and the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Executive Director shall have the discretion to refer the application to the POST Council. If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction shall continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers shall be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. (4-2-03)

0536. 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. (3-30-07)

~~054. (RESERVED).~~

0557. TRAFFIC RECORD INVESTIGATION.

01. Requirements. (7-1-93)

a. The applicant shall possess a valid driving license from his state of residence and qualify for an Idaho driver's license. (3-15-02)

b. An applicant with a record of a driver's license suspension in any jurisdiction, or a driving without privileges conviction or an equivalent conviction in any other jurisdiction, may be accepted upon approval of the POST Executive Director provided the suspension concluded or conviction occurred more than two (2) years prior to application and the applicant's agency head, with knowledge of the facts and circumstances concerning the suspension or conviction, recommends approval. The Executive Director shall have the discretion to refer the application to the POST Council. If the suspension concluded or conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council shall review the application

and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

02. Procedures. At a minimum, a check of driving records shall be made of the Motor Vehicle Division, Highway Department, state of Idaho, and the files of the motor vehicle department in the states of the applicant's previous residences. (3-15-02)

0568. BACKGROUND INVESTIGATION.

01. Requirements. The applicant shall have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (3-15-02)

02. Procedures. (3-15-02)

a. The applicant shall complete and submit to the appointing law enforcement agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement shall contain questions which aid in determining whether the applicant is eligible for certified status as a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. The background investigation shall include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information shall be recorded and retained by the appointing agency. (~~3-15-02~~)()

b. The appointing agency shall conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions shall be asked about: (3-15-02)

- i. Use of intoxicants, narcotics and drugs; (3-15-02)
- ii. Physical, mental, and emotional history; (3-15-02)
- iii. Family problems; (3-15-02)
- iv. Moral outlook and habits; and (3-15-02)
- v. Financial transactions. (3-15-02)

c. The appointing agency shall have a thorough investigation into the character and reputation of the applicant conducted by an experienced investigator. The applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty shall be explored. (3-15-02)

d. All results of the background investigation shall be considered confidential and processed accordingly. (3-15-02)

e. The results of the background investigation shall ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (3-15-02)

0579. 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~~ of the above may be considered if accompanied by the certificate of 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. ~~(3-30-07)()~~

b. Vision. (7-1-93)

i. The applicant must possess ~~normal~~ binocular coordination that does not manifest diplopia; 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~~ on a color discrimination test. Waiver ~~to~~ of the above may be considered by the Council if accompanied by the certificate of 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~~ weaker 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 to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or ~~worse~~ weaker. Waiver ~~to~~ of the above may be considered by the Council if accompanied by the certificate of 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. ~~(3-30-07)()~~

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 of the above~~ may be considered by the Council upon the applicant's demonstration that the ~~defect~~ deficiency 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. A medical examination shall remain valid for one (1) year. ~~(3-20-04)()~~

05860. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation shall be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, ~~or juvenile detention,~~ or juvenile probation officer. (3-15-02)()

02. Procedure. During the interview, the examining psychiatrist or psychologist shall evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination shall be recorded and that record or a summary of recommendations shall be forwarded to the appointing authority for review. (3-15-02)

~~05961.~~ APTITUDE.

The applicant shall be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the law enforcement function. (3-15-02)

~~0602.~~ EXCEPTIONS.

The required minimum standards for employment are not applicable to the ~~superintendent~~ director of ~~state police~~ the Idaho State Police or any elected official. (3-15-02)()

~~0613.~~ CODE OF CONDUCT/CODE OF ETHICS.

Each applicant shall attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in Subsection 091.04 and the Law Enforcement Code of Ethics as ~~adopted by the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, VA 22314~~ found in Subsection 091.05. (4-2-03)()

~~0624.~~ PROBATIONARY PERIOD.

01. Probation. Every officer appointed by an agency below the level of agency head shall satisfactorily complete a probationary period of not less than six (6) months. This requirement shall also apply to officers who transfer laterally into an agency. (3-15-02)

02. Supervisor/Mid-Manager. Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position shall satisfactorily complete a probationary period of not less than six (6) months in that position. (3-15-02)

03. Extended. No peace, detention, ~~or juvenile detention,~~ or juvenile probation officer who lacks the training qualifications required by the Council shall have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (3-15-02)()

~~0635.~~ SPECIAL PROVISIONS.

01. Minimum Standards. It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (7-1-93)

02. No Discrimination. No agency shall discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (3-15-02)

03. Equal Opportunity Employer. Every agency shall be an equal opportunity employer. (3-15-02)

~~0646.~~ -- 069. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

Every peace and detention officer must begin the respective POST Basic Training Academy within six (6) months

from the date of their appointment as a full-time officer. Every peace, detention, juvenile detention, and juvenile probation officer must successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. (4-6-05)

01. Closed Campus. The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies will operate as a closed campus Monday through Thursday. The POST Council may consider an exemption to this requirement in the case of a documented severe financial hardship for the applicant where no other alternative exists and provided the applicant's agency head files a written request for review with the POST Council. A trainee granted a hardship exemption will be required to attend all mandatory classes, and must not be late to any class. Unauthorized lateness to or absence from any class will be grounds for revocation of the hardship exemption by the POST Executive Director. (~~3-20-04~~)()

02. Open Campus. All other POST Basic Training Academies shall operate as an open campus.()

023. Attendance. Attendance will be required of each trainee at all classes in the Basic Training Academy. A trainee who is absent for more than one (1) day of the academy session must make up such course content. (3-20-04)

034. Completion. A trainee must successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course must be repeated. (3-20-04)

045. Field Training. The field training portion must be completed to be eligible for certification. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

079. THE PATROL-TO-DETENTION TRANSITION ACADEMY TRAINING CURRICULUM.

01. Eligibility. To be eligible to attend the Patrol-to-Detention Transition Academy, each applicant shall be: (4-2-03)

a. A peace or county detention officer appointed by a duly constituted Idaho law enforcement agency who possesses or is eligible to possess a valid Idaho POST Basic, Intermediate, or Advanced Certificate; (4-2-03)

b. A self-sponsored student who has satisfactorily completed the Idaho POST Basic Patrol Academy within the last three (3) years; ~~or~~ (~~4-2-03~~)()

c. A program coordinator of an Idaho POST-certified vocational law enforcement program; or ()

ed. A professional member of the POST Council staff. (4-2-03)

02. Training Hours. The amount of training for which certification may be granted in the Patrol-to-Detention Transition Academy shall be a total of one hundred thirty (130) hours, with ninety (90) hours received at the training academy and forty (40) hours received in jail training in the officer's appointing agency or another agency if necessary prior to or subsequent to attendance at the Patrol-to-Detention Transition Academy. (4-2-03)

03. Requirements. (4-2-03)

a. Successful completion of ninety (90) hours of instruction in the following minimum prescribed subject areas at the Patrol-to-Detention Transition Academy shall be required:

Summary	Hours
Jail Standards Procedures	9
Detention Legal Issues	20
Practical Skills	15
Jail Medical Issues	10
Human Relations	6
Detention Techniques	13
Incident Procedures	4
Emergency Procedures	6
Research Assignment	1
Administration/Examinations	6
Sub-Total	90
Jail Training Manual	40
Total	130

(4-2-03)

b. It is emphasized that the established patrol-to-detention transition academy training is only a minimum and that additional instruction beyond the academy is necessary if the proper training of a detention officer, as required by the profession, is to be accomplished. (4-2-03)

c. Successful completion of forty (40) hours of supervised jail training in the appointing agency, or another agency if necessary, shall be required. (4-2-03)

04. Procedure. (4-2-03)

a. Trainees shall be enrolled in the Patrol-to-Detention Transition Academy in sufficient time to permit completion of the course and the supervised jail training during the twelve-month (12) period following their appointment as a detention officer. (4-2-03)

b. The Council shall issue a certificate of graduation from the Patrol-to-Detention Transition Academy to each trainee who successfully completes the Patrol-to-Detention Transition Academy. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

092. LAPSE OF PEACE OFFICER CERTIFICATION.

The certification of any peace officer will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that ~~those persons once POST certified as peace officers an Idaho~~ POST-certified peace officer who remains in ~~active law enforcement in Idaho~~ an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho 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 will retain their POST certification ~~for purposes of compliance with this rule. The person must provided they~~ satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours

~~active law enforcement~~ per year. ~~This includes administrative, jail, or civil division duty assignments in law enforcement agencies as defined in Section 19-5101(d), Idaho Code.~~ (4-11-06)()

01. Three to Five Years. A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (4-6-05)

- a. Submit a POST Certification Patrol Challenge Packet; (4-2-03)
- b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- c. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical Fitness Test Battery; and (4-2-03)
- d. Satisfy the probationary period requirement of Section 0624. (~~4-2-03~~)()

02. Over Five Years. A peace officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Patrol Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (4-6-05)

- a. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- b. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- c. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical Fitness Test Battery; and (4-2-03)
- d. Satisfy the probationary period requirement of Section 0624. (~~4-2-03~~)()

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

04. Exception. The provisions of Subsections 092.01 through 092.03 will not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)

093. PEACE OFFICER CERTIFICATION.

Any peace officer as defined in Section 19-5101(d), Idaho Code, except any elected official, any deputy sheriff serving civil process, the ~~superintendent~~ director of the Idaho State Police, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall 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 Subsection 030.16~~1~~. (4-2-03)()

094. GENERAL PROVISIONS.

01. Purpose. Basic, Part-Time Basic, Intermediate, and Advanced Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of law enforcement. (4-2-03)

02. Eligibility. To be eligible for the award of a Basic, Intermediate, or Advanced Certificate, each applicant shall be a professional member of the POST Council staff, or a full-time peace officer appointed by a duly constituted Idaho law enforcement agency. To be eligible for the award of a part-time Basic certificate each applicant shall be a professional member of the POST Council staff, or a part-time peace officer appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

03. Applications. All applications for award of the Basic, Part-Time Basic, Intermediate, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

04. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

05. Minimum Standards. Each applicant shall meet the minimum standards for employment and basic training as provided in Sections 050 through 06~~34~~ and 070 through 076. (4-2-03)()

06. Other. The ~~superintendent~~ director of the Idaho State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, provided they meet the minimum requirements for certification as prescribed in these rules. (4-2-03)()

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. 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 06~~34~~, will be subject to the determination of the Council. (3-30-07)()

096. COLLEGE CREDITS.

01. College Hour. One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-93)

02. College Quarter Hour. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-93)

03. Conversion to POST Training Hours. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

04. Credits for POST-Approved Training. When college credit is awarded or purchased for POST-approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant, ~~subject to the limitation set forth in Subsection 096.05.~~ (4-2-03)()

~~**05. Limitation on Credits for POST-Approved Training.** Of the required amount of college credits needed for higher levels of certification, no more than one-half (1/2) shall be from credits awarded or purchased from any college or university for attending POST-approved training.~~ (4-2-03)

097. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section 094 of these rules, the requirements in Section 097 are necessary

for award of the basic certificate and the part-time basic certificate. (4-2-03)

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic patrol academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

02. Basic Training. The applicant shall have satisfactorily completed: (4-2-03)

a. The POST Basic Patrol Academy as required by the Council in Section 071; or (4-2-03)

b. Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and shall have passed the POST patrol certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall 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 shall successfully complete the POST Basic Patrol Academy to be certified. (4-2-03)

03. Field Training. The applicant shall have satisfactorily completed forty (40) hours of POST-approved field training. (4-2-03)

04. Vo-Tech Program Graduates. Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)

05. Patrol and Detention Vo-Tech Program Graduates. An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program, shall be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: ()

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the vo-tech program; ()

b. Possesses detention officer certification from Idaho; ()

c. Submits a POST Certification Patrol Challenge Packet; ()

d. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; ()

e. Passes the following tests administered by a POST Training Specialist: ()

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; ()

ii. The POST Firearms Qualification Course; ()

iii. The POST Physical Fitness Test Battery; and ()

f. Satisfies the probationary period requirement of Section 064. ()

(BREAK IN CONTINUITY OF SECTIONS)

116. CAREER-LEVEL CERTIFICATION.

01. General Provisions. (4-2-03)

a. To be eligible for the award of a Supervisor, Master, or Management certificate, each applicant shall be a full-time peace officer, county detention officer, or communications specialist appointed by a duly constituted Idaho law enforcement agency or a professional member of the POST Council staff. To be eligible for the award of an Executive certificate, each applicant shall be a full-time peace officer appointed by a duly constituted Idaho law enforcement agency or a professional member of the POST Council staff. (4-2-03)

b. All applications for award of the Supervisor, Master, Management, or Executive Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

c. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

d. Each applicant for the Master and Supervisor certificates shall meet the minimum standards for employment and basic training as provided in Sections 050 through 0634 and 070 through 076. Each applicant for the Management and Executive certificates shall meet the minimum standards for employment as provided in Sections 050 through 0634. (~~4-2-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

130. LEVEL I RESERVE PEACE OFFICER CERTIFICATION.

Any peace officer as defined in Section 19-5101(d), Idaho Code, except any elected official, any deputy sheriff serving civil process, the ~~superintendent~~ director of the Idaho State Police, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall 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 Subsection 030.161. (~~4-2-03~~)()

131. GENERAL PROVISIONS.

01. Eligibility. To be eligible for the award of a Level I Reserve certificate or Level I Reserve Marine Deputy certificate, each applicant must be a reserve peace officer appointed by a duly constituted Idaho law enforcement agency or a professional member of the POST Council staff. (4-6-05)

02. Minimum Standards. Each applicant must meet the minimum standards for employment as provided in Sections 050 through 0634, with the exception of fitness which will be left to the discretion of the appointing agency. (~~4-6-05~~)()

03. Applications. All applications for award of the Level I Reserve certificate or Level I Reserve Marine Deputy certificate must be completed on the prescribed form "Application for Certification" as provided by the POST Council. (4-6-05)

04. Submission. The Application for Certification form must be submitted by the applicant to his agency head who must review it for accuracy prior to signing it and forwarding it to the Council. Certificates must be issued to the agency head for award to the applicant. (4-6-05)

05. Supervision. All certified reserve peace officers must be under supervision of a full-time peace officer. The term "supervision" is intended to limit the activities of a reserve peace officer. Each agency must draft its individual agency policy in reference to the supervision of its certified reserve peace officers, and that policy must be kept on file within each agency. (4-6-05)

06. Limitation. A reserve peace officer's certification will be effective only during those periods when he is formally assigned by the appointing agency to perform the duties of a peace officer. (4-6-05)

07. Retaining Certification. A certified reserve peace officer must satisfy the continuing training requirements of Sections 360 through 363 and work one hundred twenty (120) hours annually in a peace officer capacity to retain certification. Documentation of hours worked must be kept on file at the appointing agency. Any reserve peace officer not satisfying the continuing training requirements of Sections 360 through 363 or working less than one hundred twenty (120) hours annually must complete all requirements as set forth in Sections 130 through 131 and either Sections 132 through 135 or 146 through 149 to be recertified. (4-6-05)

08. Full-Time Peace Officer Status. To be certified as a full-time peace officer, a reserve peace officer, upon appointment to full-time peace officer status, must comply with the requirements in Sections 093 through 097. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

171. LAPSE OF DETENTION OFFICER CERTIFICATION.

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that ~~those persons once POST-certified as county detention officers~~ an Idaho POST-certified county detention officer who remains in active law enforcement in Idaho an administrative, patrol, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho 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 will retain their POST certification for purposes of compliance with this rule. The person must provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours ~~active law enforcement~~ per year. ~~This includes administrative, patrol, or civil division duty assignments in law enforcement agencies as defined in Section 19-5101(d), Idaho Code.~~ (4-11-06)()

01. Three to Five Years. A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (4-6-05)

- a.** Submit a POST Certification Detention Challenge Packet; (4-2-03)
- b.** Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)
- c.** Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i.** The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.b.c.; (4-2-03)()
 - ii.** The POST Firearms Qualification Course; (4-2-03)
 - iii.** The POST Physical Fitness Test Battery; and (4-2-03)
- d.** Satisfy the probationary period requirement of Section 0624. (7-1-99)()

02. Over Five Years. A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (4-6-05)

- a.** Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

- b. Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
 - c. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.b.c.; (~~4-2-03~~)()
 - ii. The POST Firearms Qualification Course; (4-6-05)
 - iii. The POST Physical Fitness Test Battery; and (4-6-05)
 - d. Satisfy the probationary period requirement of Section 06~~24~~. (~~7-1-99~~)()
- 03. Over Eight Years.** A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

172. DETENTION OFFICER CERTIFICATION.

Any county detention officer as defined in Section 19-5101(b), Idaho Code, shall 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 Subsection 030.16~~1~~. (~~4-2-03~~)()

173. GENERAL PROVISIONS.

- 01. Purpose.** Level I, Level II, and Level III Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of a detention officer. (4-2-03)
- 02. Eligibility.** To be eligible for the award of a Level I, Level II, or Level III certificate, each applicant shall be a full-time county detention officer appointed by a duly constituted Idaho law enforcement agency, a full-time peace officer who has graduated from the Patrol-to-Detention Transition Academy and is currently appointed by a duly constituted Idaho law enforcement agency, or a professional member of the POST Council staff. (4-2-03)
- 03. Applications.** All applications for award of the Level I, Level II, or Level III Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)
- 04. Submission.** The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)
- 05. Minimum Standards.** Each applicant shall meet the minimum standards for employment and basic training as provided in Sections 050 through 06~~34~~, 070 through 074, 077, and 078. (~~4-2-03~~)()
- 06. Conversion.** Any county detention officer who currently possesses a Level I, Level II, or Level III detention officer classification shall convert from classified to certified status. (4-2-03)

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. 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 06~~34~~, will be subject to the determination of the Council. (~~3-30-07~~)()

175. COLLEGE CREDITS.

- 01. College Hour.** One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-99)
- 02. College Quarter Hour.** One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-99)
- 03. Conversion to POST Training Hours.** College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)
- 04. Credits for POST-Approved Training.** When college credit is awarded or purchased for POST-approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant, ~~subject to the limitation set forth in Subsection 175.05.~~ (4-2-03)()
- ~~**05. Limitation on Credits for POST-Approved Training.** Of the required amount of college credits needed for higher levels of certification, no more than one-half (1/2) shall be from credits awarded or purchased from any college or university for attending POST-approved training. (4-2-03)~~

176. THE LEVEL I CERTIFICATE.

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

- 01. Probation.** The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)
- 02. Basic Training.** The applicant shall have satisfactorily completed: (4-2-03)
- a.** The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)
 - b.** The POST Patrol-to-Detention Transition Academy; or (4-2-03)
 - c.** Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and shall have passed the POST detention certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall 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 shall successfully complete the POST Basic Detention Academy to be certified. (4-2-03)
- 03. Jail Training.** The applicant shall have satisfactorily completed forty (40) hours of POST-approved jail training. (4-2-03)
- 04. Vo-Tech Program Graduates.** Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)
- 05. Patrol and Detention Vo-Tech Program Graduates.** An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program, shall be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: ()
- a.** Was appointed to a peace officer position in Idaho within three (3) years from graduating from the vo-tech program; ()
 - b.** Possesses peace officer certification from Idaho; ()

- c.** Submits a POST Certification Detention Challenge Packet: ()
- d.** Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam: ()
- e.** Passes the following tests administered by a POST Training Specialist: ()
- i.** The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.: ()
- ii.** The POST Firearms Qualification Course: ()
- iii.** The POST Physical Fitness Test Battery; and ()
- f.** Satisfies the probationary period requirement of Section 064. ()

177. CHALLENGING THE BASIC DETENTION ACADEMY.

Any county detention officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a detention officer or a student who has satisfactorily completed a Basic Detention Academy equivalent to the Idaho POST Basic Detention Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Detention Academy, provided the officer: (4-6-05)

01. Submission of Challenge Packet. Submits a POST Certification Detention Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

02. Detention Legal Issues Course Attendance. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)

03. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.bc.; (~~4-2-03~~)()

b. The POST Firearms Qualification Course; and (4-2-03)

c. The POST Physical Fitness Test Battery. (4-2-03)

04. Completes Probationary Period. Completes his probationary period as required by Subsection 176.01. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

197. GENERAL PROVISIONS.

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. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law

enforcement agency. (4-2-03)

03. Eligibility. To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

04. Applications. All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

05. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

06. Training. Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

07. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050 through 0568. (~~4-2-03~~)()

198. COMMUNICATIONS SPECIALIST EXPERIENCE.

Communications specialist experience, as used herein, means actual time served as a full-time communications specialist with a duly constituted law enforcement agency. The acceptability of time served as a 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 0568, shall be subject to the determination of the Council. (~~4-2-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

323. GENERAL PROVISIONS.

01. Purpose. Vocational law enforcement program certification is established for the purpose of recognizing those programs whose curriculum is equivalent to the POST Basic Patrol Academy and/or POST Basic Detention Academy. (4-11-06)

02. Eligibility. To be eligible for vocational law enforcement program certification, the applying entity must be in compliance with all standards established by the Idaho Department of Education for such programs, the curriculum requirements of Subsections 075.02.a. and/or 077.02.a. of these rules, and the requirements in Sections 321 through 32933 of these rules. (~~4-11-06~~)()

03. Assessment Form. All assessments must be completed on the prescribed form as provided by the POST Council. (4-11-06)

04. Assessment Visits. Entities seeking vocational law enforcement program certification and those programs already certified will be subject to scheduled and unscheduled visits by the POST Regional Training Specialists and other members of the Peace Officer Standards and Training Council during which adherence to certification standards will be assessed. (4-11-06)

05. Expiration of Certification. Vocational law enforcement program certification will remain valid for two (2) years. (4-11-06)

06. Renewal of Certification. To maintain certified status, a vocational law enforcement program must successfully complete the recertification process prior to the expiration of their certification. Upon renewal, the vocational law enforcement program certification will remain valid for another two (2) years. If a program is granted temporary certification, upon approval of full certification status, the program's certification will expire on the date it

would have expired had full certification initially been granted at time of renewal. (4-11-06)

324. PROCEDURES.

01. Permission to Proceed. An entity seeking vocational law enforcement program certification must receive permission to proceed from the Peace Officer Standards and Training Council prior to beginning the certification process. (4-11-06)

02. Assessment. Upon complying with the requirements of Sections 321 through ~~329~~³³ of these rules, the program coordinator for the entity seeking vocational law enforcement program certification must contact a POST Regional Training Specialist to schedule a comprehensive on-site assessment by a POST Assessment Team. (~~4-11-06~~)()

a. Upon completion of an on-site assessment, if it is determined that one (1) or more of the requirements for program certification have not been met, the applying entity will be given ninety (90) days to correct the deficiency. Written notification of the requirement(s) not met and the date scheduled for a second on-site assessment of the program will be provided to the program coordinator by the POST Regional Training Specialist. (4-11-06)

b. Upon completion of an on-site assessment, if it is determined that all requirements for program certification have been met, the POST Council will issue a certificate to the applying entity. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

333. CONDUCT AND BEHAVIOR.

01. POST Minimum Standards for Employment. Any vocational law enforcement student that does not meet the Minimum Standards for Employment as provided in Sections 050 through ~~063~~⁴ of these rules will not be given the final test unless they have been granted a waiver in accordance with Subsection 327.03 of these rules. (~~4-11-06~~)()

02. Code of Conduct/Code of Ethics. Every vocational law enforcement student must attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in Subsection 091.04 of these rules and the Law Enforcement Code of Ethics as *adopted by the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, VA 22314* found in Subsection 091.05 of these rules. (~~4-11-06~~)()

03. Integrity. The vocational law enforcement program must have a policy on integrity. This policy must clearly state that dishonesty, including acts of academic dishonesty and plagiarism; untruthfulness; or discourtesy will not be tolerated. This policy must be reviewed with all vocational law enforcement students upon entry into the program. (4-11-06)

04. Social Contact. The vocational law enforcement program must have a policy expressly prohibiting students from having social contact, either on or off campus, with any vocational law enforcement program staff member or instructor. Associations between students and vocational law enforcement program staff members or instructors must be professional in nature at all times. (4-11-06)

05. Other Standards of Conduct and Behavior. The vocational law enforcement program must address other standards of conduct and behavior that reflect good taste, courtesy, consideration, and respect for the rights and privileges of others. Any conduct detrimental to the conduct, efficiency, or discipline of the vocational law enforcement program must be prohibited. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

351. SELF-SPONSORED STUDENT PROGRAM SELECTION STANDARDS.

01. Requirement. Every Self-Sponsored Student shall meet the minimum standards for employment (Sections 050 through 0634) of this manual. ~~(3-20-97)~~(____)

02. Procedures. (3-20-97)

a. The applicant shall be required to complete and submit to the POST Council a comprehensive application and personal history packet, along with two (2) sets of fingerprints on FBI applicant fingerprint cards. A non-refundable application fee is required and must accompany the application. (3-20-97)

b. In order to determine the applicant's suitability as a Self-Sponsored Student, the POST Council shall conduct a thorough criminal and personal history background investigation. The fingerprint cards shall be submitted to the Bureau of Criminal Identification, which shall use one (1) set to conduct a statewide search, and shall forward the other set to the FBI for a national criminal history record check. All results of the background investigation will be considered confidential and processed accordingly. (3-20-97)

c. The applicant must also successfully complete a polygraph, psychological evaluation, physical agility test, and a Police Officer Selection written examination approved by POST Council. (3-20-97)

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. 11-1104-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 21, 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 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 17, 2007.

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:

Clarify what documentation is acceptable as proof of citizenship; reword education and experience standards to make them easier to understand; add language allowing minor hearing deficiencies to be waived by the POST Executive Director rather than the POST Hearing Board; update minimum vision standards; establish how long a medical exam is valid; correct outdated subsection numbers referring to other rules; add firearms qualification requirement for Probation and Parole officers.

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

Due to an extreme shortage of Correction Officers in the prisons, these rules are being processed as temporary rules to streamline the application process as soon as possible.

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 representatives of the affected parties were involved in the drafting and approval of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Trish Christy at (208) 884-7253.

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 24, 2007.

DATED this 23rd day of August, 2007.

Jeffrey J. Black
Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr., Meridian, ID

P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7251/(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1104-0701

031. MINIMUM STANDARDS FOR EMPLOYMENT FOR CORRECTION OFFICERS.

Every correction officer must meet the requirements in Sections 031 through 0434. (4-11-06)(8-21-07)T

~~01. **Citizenship.** Must be a citizen of the United States. (4-11-06)~~

~~02. **Education Requirements.** (4-11-06)~~

~~a. Graduation from high school or having passed the General Educational Development Test indication of high school graduation. The military or veterans equivalent of high school graduation is also acceptable. (4-11-06)~~

~~b. Documentary evidence of satisfaction of this requirement must be in the form of a high school diploma, high school transcript, GED certificate, or GED test report form. A college transcript indicating the successful completion of a minimum of fifteen (15) academic credits is also acceptable. In unusual circumstances, the Council may accept other documentation, and in such cases the decision of the Council will be final. (4-11-06)~~

~~03. **Experience Requirements.** (4-11-06)~~

~~a. Not less than two (2) years of responsible work experience following high school graduation (or when the applicant would have graduated). (4-11-06)~~

~~b. The work experience requirement can be complied with by two (2) years of any combination of military service, gainful employment, education, or any other productive activity. (4-11-06)~~

032. CITIZENSHIP.

The applicant shall be a citizen of the United States. (8-21-07)T

01. Documentation. Proof of citizenship shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following: (8-21-07)T

a. Birth Certificate issued by the city, county, or state and filed within one (1) year of birth; (8-21-07)T

b. Naturalization Certificate; (8-21-07)T

c. U.S. Passport; (8-21-07)T

d. Consular Report of Birth Abroad or Certification of Birth; or (8-21-07)T

e. Certificate of Citizenship. (8-21-07)T

033. EDUCATION.

The applicant shall be a high school graduate or have earned a GED (General Education Development) certificate. (8-21-07)T

01. Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following: (8-21-07)T

a. High school diploma; (8-21-07)T

b. GED certificate; (8-21-07)T

- c.** High school transcript; (8-21-07)T
- d.** GED test report form; or (8-21-07)T
- e.** College transcript indicating the successful completion of a minimum of fifteen (15) academic credits. (8-21-07)T

034. EXPERIENCE.

The applicant shall have a minimum of two (2) years of any combination of responsible work experience, military service, education, or any other productive activity. (8-21-07)T

0325. CHARACTER.

The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming correction officers, and to protect against acts or conduct which may endanger the safety and welfare of the public. (4-11-06)

0336. CRIMINAL RECORD.

01. Fingerprints. The applicant must be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the POST Council. (4-11-06)

02. Conviction. The term “conviction” includes: (4-11-06)

- a.** Any conviction in a federal, tribal, state, county, or municipal court; (4-11-06)
- b.** A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (4-11-06)
- c.** The payment of a fine; (4-11-06)
- d.** A plea of guilty, nolo contendere; or (4-11-06)
- e.** A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (4-11-06)

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-11-06)

a. An applicant must be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, 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 all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

b. An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant’s agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as

a correction officer in the state of Idaho.

(4-11-06)

04. Felony Conviction. An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction will continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho.

(4-11-06)

0347. 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.

(4-11-06)

~~035.---036. (RESERVED).~~

0378. BACKGROUND INVESTIGATION.

01. Requirements. The applicant must have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the correction profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions.

(4-11-06)

02. Procedures.

(4-11-06)

a. The applicant must complete and submit to the appointing correction agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement must contain questions which aid in determining whether the applicant is eligible for certified status as a correction officer. The background investigation must include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information must be recorded and retained by the appointing agency.

(4-11-06)

b. The appointing agency must conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the correction mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions may include, but not be limited to:

(4-11-06)

i. Use of intoxicants, narcotics and drugs; (4-11-06)

ii. Physical, mental, and emotional history; (4-11-06)

iii. Family problems; (4-11-06)

iv. Moral outlook and habits; and (4-11-06)

v. Financial transactions. (4-11-06)

c. The appointing agency must conduct a thorough investigation into the character and reputation of the applicant which may include, but not be limited to, the applicant’s morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty.

(4-11-06)

d. All results of the background investigation must be considered confidential and processed accordingly. (4-11-06)

e. The results of the background investigation must ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (4-11-06)

0389. PHYSICAL -- MEDICAL.

01. Requirements. (4-11-06)

a. Hearing. The applicant must have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver ~~to~~ of the above may be considered ~~by the Council~~ if accompanied by the certificate of an audiologist 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 correction officer. If the applicant's unaided or aided hearing at one thousand (1000) Hz and two thousand (2000) Hz is between thirty-one (31) and forty (40) decibels, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director shall have the discretion to refer the application to the POST Council. If the applicant's unaided or aided hearing at one thousand (1000) Hz and two thousand (2000) Hz is over forty (40) decibels or if the applicant's unaided or aided hearing at three thousand (3000) Hz is over fifty (50) decibels, the POST Council shall review the application and determine whether the individual shall be certifiable as a correction officer in the state of Idaho. (~~4-11-06~~)(8-21-07)T

b. Vision. (4-11-06)

i. The applicant must demonstrate to a vision specialist the ability to distinguish primary colors. (4-11-06)

ii. The applicant must have uncorrected vision in each eye of no ~~worse~~ weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) 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/thirty (20/30) 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 who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or ~~worse~~ weaker. Waiver ~~to~~ of the above may be considered by the Council if accompanied by the certificate of 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 correction officer. (~~4-11-06~~)(8-21-07)T

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 of Section 039~~ may be considered by the Council upon the applicant's demonstration that the ~~defect~~ deficiency does not jeopardize or impair his ability to perform the duties of a correction officer. (~~4-11-06~~)(8-21-07)T

d. Physical Agility. The applicant must pass the POST Physical Agility Test for Correction Officers. (4-11-06)

02. Procedures. (4-11-06)

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. (4-11-06)

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 correction 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. A medical examination shall remain valid for one (1) year. (~~4-11-06~~)(8-21-07)T

~~039~~40. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. (4-11-06)

02. Procedure. During the interview, the examining psychiatrist or psychologist must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination must be recorded and that record or a summary of recommendations must be forwarded to the appointing authority for review. (4-11-06)

~~040~~1. APTITUDE.

The applicant must be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the correction function. (4-11-06)

~~041~~2. CODE OF CONDUCT/CODE OF ETHICS.

Each applicant must attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.04 and the Law Enforcement Code of Ethics as *adopted by the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, VA 22314* found in Subsection 091.05. (~~4-11-06~~)(8-21-07)T

~~042~~3. PROBATIONARY PERIOD.

01. Probation. Every officer appointed by an agency below the level of agency head must satisfactorily complete a probationary period of not less than six (6) months. This requirement must also apply to officers who transfer laterally into an agency. (4-11-06)

02. Supervisor/Mid-Manager. Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position must satisfactorily complete a probationary period of not less than six (6) months in that position. (4-11-06)

03. Extended. No correction officer who lacks the training qualifications required by the Council will have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (4-11-06)

~~043~~4. SPECIAL PROVISIONS.

01. Minimum Standards. It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (4-11-06)

02. No Discrimination. No agency will discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (4-11-06)

03. Equal Opportunity Employer. Every agency must be an equal opportunity employer. (4-11-06)

~~044~~5. -- 050. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

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~~1~~. ~~(4-11-06)~~(8-21-07)T

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 04~~34~~, 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, 2010. ~~(3-30-07)~~(8-21-07)T

053. THE BASIC CERTIFICATE.

In addition to the requirements set forth in Sections 022 and 031 through 04~~34~~ of these rules, the requirements in Section 053 of these rules are necessary for award of the Basic Correction Officer certificate. ~~(4-11-06)~~(8-21-07)T

01. Probation. The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic correction academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (4-11-06)

02. Basic Training. The applicant must have satisfactorily completed: (4-11-06)

a. The POST Basic Correction Academy; or (4-11-06)

b. Be a graduate of a private prison contractor's correction officer training program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Correction Academy, and must have passed 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. (4-11-06)

03. Correction Field Training Manual. The applicant must have satisfactorily completed forty (40) hours of POST-approved correction field training. (4-11-06)

04. Private Prison Contractor's Correction Officer Training Program. A graduate from an Idaho POST-certified private prison contractor's correction officer training program must also submit a completed POST Correction Officer Certification Packet. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.

Every adult probation and parole officer must meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 06~~35~~, with the exception of hearing, vision, and physical agility. ~~(4-11-06)~~(8-21-07)T

01. Hearing. An applicant for adult probation and parole officer certification must have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver ~~to~~ of the above may be considered ~~by the Council~~ if accompanied by the certificate of 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 an adult probation and parole 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 shall 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 shall review the application and determine whether the individual shall be certifiable as an adult probation and parole officer in the state of Idaho. ~~(4-11-06)(8-21-07)T~~

02. Vision. (4-11-06)

a. An applicant for adult probation and parole officer certification must possess ~~normal~~ binocular coordination that does not manifest diplopia; 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 of seventy percent (70%) proficiency ~~of the Dvorine or equivalent~~ on a color discrimination test. Waiver ~~to~~ of the above may be considered by the Council if accompanied by the certificate of a vision specialist's ~~certification~~ that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. ~~(4-11-06)(8-21-07)T~~

b. The applicant must have uncorrected vision in each eye of no ~~worse~~ weaker 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 who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or ~~worse~~ weaker. Waiver ~~to~~ of the above may be considered by the Council if accompanied by the certificate of a vision specialist's ~~certification~~ that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. ~~(4-11-06)(8-21-07)T~~

03. Physical Agility. An applicant for adult probation and parole officer certification must pass the POST Physical Agility Test for Adult Probation and Parole officers. (4-11-06)

062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.

The certification of any adult probation and parole officer will be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. (4-11-06)

01. Three to Five Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (4-11-06)

- a.** Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)
- b.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
 - i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ ~~(4-11-06)(8-21-07)T~~
 - ii.** The POST Firearms Qualification Course; (8-21-07)T
 - iii.** The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)
- c.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

02. Over Five Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements:

(4-11-06)

a. Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems;

(4-11-06)

b. Pass the following tests administered by a POST Training Specialist:

(4-11-06)

i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ ~~(4-11-06)~~(8-21-07)T

ii. The POST Firearms Qualification Course;

(8-21-07)T

iii. The POST Adult Probation and Parole Officer Physical Agility Test; and

(4-11-06)

c. Satisfactorily complete a probationary period of not less than six (6) months.

(4-11-06)

03. Over Eight Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement will be granted by the Council.

(4-11-06)

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 030.161. ~~(4-11-06)~~(8-21-07)T

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, 2009. (3-30-07)

064. THE BASIC CERTIFICATE.

In addition to the requirements set forth in Sections 022 and 061 of these rules, the requirements in Section 064 of these rules are necessary for award of the Basic Adult Probation and Parole Officer certificate. (4-11-06)

01. Probation. The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic adult probation and parole academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (4-11-06)

02. Basic Training. The applicant must have satisfactorily completed the POST Basic Adult Probation and Parole Academy. (4-11-06)

03. Firearms Qualification. The applicant must have passed the POST Firearms Qualification Course. (8-21-07)T

034. Adult Probation and Parole Field Training Manual. The applicant must have satisfactorily completed forty (40) hours of POST-approved adult probation and parole field training. (4-11-06)

065. CHALLENGING THE BASIC ADULT PROBATION AND PAROLE ACADEMY.

Any adult probation and parole officer presently appointed by the Idaho Department of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as an adult probation and parole officer or a student who has satisfactorily completed a Basic Adult Probation and Parole Academy equivalent to the Idaho POST Basic Adult Probation and Parole Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Adult Probation and Parole Academy, provided the officer: (4-11-06)

01. Submission of Challenge Packet. Submits a POST Certification Adult Probation and Parole Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

02. Attends and Passes POST-Certified Courses. Attends and passes Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

03. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-11-06)

a. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)(8-21-07)T

b. The POST Firearms Qualification Course; and (8-21-07)T

b.c. The POST Adult Probation and Parole Officer Physical Agility Test; ~~and~~ (4-11-06)(8-21-07)T

04. Completes Probationary Period. Completes his probationary period as required by Subsection 064.01 of these rules. (4-11-06)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 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 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 17, 2007.

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 references to the Disabled Persons Motor Vehicle Permit License to use terminology consistent with statutory amendment (S 1011). Amend the outfitter allocation rule to clarify the allocation process, to address outfitter concerns, and to be consistent with discussions with Legislative committees. Amend references to the Clearwater deer tag to refer to the White-tailed deer tag.

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, 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 2007 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 24, 2007.

DATED this 21st day of August, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut, Boise
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0701

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-301, 36-401 through 412, and 36-1101, Idaho Code, to adopt rules concerning the issuance and sales of licenses. ~~(3-30-01)~~(8-14-07)T

(BREAK IN CONTINUITY OF SECTIONS)

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. 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. (3-8-07)

05. Eligible Applicant. A physically *handicapped* disabled person certified by a physician licensed in the state in which the *handicapped* disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101~~(a)~~~~1 through 3~~, Idaho Code, and one who is capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment. ~~(3-8-07)~~(8-14-07)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. 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. (3-8-07)

09. Resident. The term "resident" is defined in Section 36-202(r), Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

303. ~~HANDICAPPED~~ DISABLED PERSONS MOTOR VEHICLE HUNTING PERMITS.

01. Applications for ~~Handicapped~~ Disabled Motor Vehicle Hunting Permits. ~~(7-1-93)~~(8-14-07)T

a. Applications for *handicapped* disabled motor vehicle hunting permits shall be on a form prescribed by the Department or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, except for blindness, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. ~~(5-3-03)~~(8-14-07)T

b. Individuals using the department form for a *handicapped* disabled motor vehicle hunting permit must complete and sign the application form. Nonresident applicants must have their signature notarized. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Idaho Code, Section 36-1101 qualifies the applicant and why. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding and firing, without assistance from other persons, ~~legal firearms or archery equipment~~ legal hunting 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 short-term or long-term disability on the application. If the disability is short term and physical mobility is expected to improve, the physician, physician assistant, or nurse practitioner must include a date when the disability is expected to end. ~~(3-20-04)~~(8-14-07)T

02. ~~Handicapped~~ Disabled Motor Vehicle Hunting Permits. ~~(7-1-93)~~(8-14-07)T

a. ~~Handicapped~~ Disabled motor vehicle hunting permits shall be issued only by the Director of the Department or his representative and shall expire no later than December 31 of the fifth year following the date of issuance. ~~(5-3-03)~~(8-14-07)T

b. The permit shall be prominently displayed on any vehicle from which the person is hunting. Where applicable, the permit shall be displayed on the driver's side of the dashboard of the parked vehicle, suspended from

the rearview mirror, or otherwise displayed so as to be in plain view of any person looking through the windshield of the vehicle. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. NONRESIDENT DEER AND ELK TAG OUTFITTER SET-ASIDE.

01. Tags. The following number of nonresident deer tags and nonresident elk tags shall annually be set aside and reserved for sale to persons who have entered into an agreement to utilize the services of an outfitter who is licensed under Chapter 21, Title 36, Idaho Code. For the each Hunting Season: (3-20-04)

- a. One thousand nine hundred (1,900) deer tags (regular or ~~Clearwater~~ White-tailed); (7-1-99)(8-14-07)T
- b. Eighty-five (85) S.E. Idaho Area deer tags; (3-20-04)
- c. Two thousand four hundred (2,400) elk tags (A or B tags for all zones); (3-20-04)

02. Restrictions. These tags shall be sold on a first-come, first-serve basis through June 30 of each year. Application for purchase of these tags shall be made by the outfitter for the nonresident on a form prescribed by the Department. The application shall be accompanied by the appropriate license fees and a certification by the outfitter that the nonresident hunter has a contract to hunt with the outfitter making application. (7-1-93)

03. Unsold Tags. Any tags not sold by July 1 of each year shall be sold by the Department to nonresidents on a first-come, first serve basis. If there is a waiting list of individuals desiring a tag for the species available, those individuals will be first served. Application shall be made only to the Headquarters office of the Department of Fish and Game in Boise, Idaho. (7-1-99)

501. -- 504. (RESERVED).

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags. Pursuant to Idaho Code, Section 36-408, 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. (3-8-07)

02. Controlled Hunt Areas. Only those controlled hunt areas 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. (3-8-07)

a. The number of allocated tags will be 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. (3-8-07)

b. 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. (3-8-07)

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 no less than one (1) tag and no more than three percent (3%); or (8-14-07)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)

(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~~ White-tailed deer tags; (~~4-6-05~~)(8-14-07)T

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 Section 36-202(z), Idaho Code) 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)

IDAPA 13 - FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 12, 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 Sections 36-104(b) and 36-1101(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

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 legal weapon definitions to:

- 1) Allow lighted reticles powered by battery or tritium for telescopic sights;
- 2) Increase the let-off restriction for compound bows;
- 3) Allow the use of lighter arrows and bolts;
- 4) Amend the minimum length for arrows and bolts;
- 5) require loose powder for muzzleloaders;
- 6) Require muzzleloader projectiles to be within a minimum diameter of the bore diameter;
- 7) Prohibit 209 primers for muzzleloader seasons; and
- 8) Require an exposed pivoting hammer and exposed ignition system for muzzleloader seasons.

Add Units 49, 57 and 59 to the list of Big Game Management Units with motorized vehicle use restrictions and delete controlled hunt boundary descriptions which are set by proclamation and published in the hunting brochure.

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 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 2007 hunting seasons.

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 24, 2007.

DATED this 21st day of August, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut, Boise
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715 / Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0701

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; except scopes containing battery powered or tritium lighted reticles are allowed.
(~~3-30-01~~)(3-12-07)T

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteen-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

c. With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

d. With arrows or bolts having expanding broadheads. (7-1-93)

e. With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

f. With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)

g. With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)

h. With any compound bow with more than ~~sixty~~ sixty-eight-five percent (~~68~~85%) let-off.

~~(7-1-93)~~(3-12-07)T

i. With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than ~~four~~ three hundred (~~4300~~) grains. ~~(3-20-97)~~(3-12-07)T

j. With an arrow less than ~~twelve~~ twenty-four (~~#24~~) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. ~~(3-30-01)~~(3-12-07)T

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 holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)

i. With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)

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 loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. ~~(3-20-97)~~(3-12-07)T

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~~ with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. ~~(3-20-97)~~(3-12-07)T

vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. ~~(4-6-05)~~(3-12-07)T

viii. Is equipped with an exposed pivoting hammer and has an exposed ignition system. (3-12-07)T

~~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)~~

~~ix. 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, 49, 50, 51, 52, 53, 56, 57, 58, 59, 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. (~~3-30-07~~)(3-12-07)T

(BREAK IN CONTINUITY OF SECTIONS)

700. CONTROLLED HUNT AREA DESCRIPTIONS -- DEER.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

- ~~01. **Hunt Area 1.** All of Unit 1. (3-30-07)~~
- ~~02. **Hunt Area 8X.** All of Unit 8. (3-30-07)~~
- ~~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). (3-30-07)~~
- ~~04. **Hunt Area 10AX.** That portion of Unit 10A within one (1) mile of private land. (For purposes of this hunt, "private land" does not include corporate timberlands). (3-30-07)~~
- ~~05. **Hunt Area 11.** All of Unit 11. (10-26-94)~~
- ~~06. **Hunt Areas 11A.** All of Unit 11A. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~08. **Hunt Area 13.** All of Unit 13. (7-1-99)~~
- ~~09. **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. (3-30-07)~~
- ~~11. **Hunt Area 18.** All of Unit 18. (3-30-07)~~
- ~~12. **Hunt Area 19A.** All of Unit 19A. (3-15-02)~~
- ~~13. **Hunt Area 20A.** All of Unit 20A. (4-5-00)~~
- ~~14. **Hunt Area 21.** All of Units 21, 28, 36, 36A, and 36B. (3-30-07)~~
- ~~15. **Hunt Area 21-1.** Private land within Units 21, 21A, 28, 29, 30, 30A, 36A, 36B, 37, and 37A. (3-30-07)~~
- ~~16. **Hunt Area 22.** All of Unit 22. (3-30-01)~~
- ~~17. **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. (3-30-07)~~
- ~~19. **Hunt Area 25.** All of Unit 25. (7-1-93)~~
- ~~20. **Hunt Area 26.** All of unit 26. (4-5-00)~~

- ~~21. **Hunt Area 27.** All of Unit 27. (4-5-00)~~
- ~~22. **Hunt Area 31.** All of Unit 31. (3-30-01)~~
- ~~23. **Hunt Area 32.** All of Unit 32. (3-30-01)~~
- ~~24. **Hunt Area 32A.** All of Unit 32A. (3-30-01)~~
- ~~25. **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. (3-30-07)~~
- ~~27. **Hunt Area 39-1.** All of Unit 39. (3-15-02)~~
- ~~28. **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. (3-30-07)~~
- ~~29. **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)~~
- ~~30. **Hunt Areas 40-1.** All of Unit 40. (3-30-07)~~
- ~~31. **Hunt Area 40-2.** All of Units 40, 41, and 42. (4-5-00)~~
- ~~32. **Hunt Area 41.** All of Unit 41. (3-30-01)~~
- ~~33. **Hunt Areas 42-1.** All of Unit 42. (3-30-07)~~
- ~~34. **Hunt Area 43.** All of Unit 43. (3-30-07)~~
- ~~35. **Hunt Area 44-1.** All of Unit 44. (3-30-01)~~
- ~~36. **Hunt Area 44-2.** All of Units 44, 45, and 52. (3-30-07)~~
- ~~37. **Hunt Area 45-1.** That portion of Unit 45 west of the Bliss-Hill City Road. (3-30-07)~~
- ~~38. **Hunt Area 45-2.** All of Unit 45. (3-30-07)~~
- ~~39. **Hunt Area 45-3.** That portion of Unit 45 east of the Bliss-Hill City Road. (3-30-07)~~
- ~~40. **Hunt Area 46.** All of Units 46, 47, 54, 55, and 57. (3-15-02)~~
- ~~41. **Hunt Area 47-1.** All of Unit 47. (7-1-98)~~
- ~~42. **Hunt Area 47-2.** All of Units 46 and 47. (10-26-94)~~
- ~~43. **Hunt Area 48.** All of Unit 48. (10-26-94)~~
- ~~44. **Hunt Area 49.** All of Unit 49. (10-26-94)~~
- ~~45. **Hunt Area 50-1.** That portion of Unit 50 west of U.S. Highway 93. (3-30-01)~~

- ~~46. **Hunt Area 50-2.** All of Unit 50. (7-1-98)~~
- ~~47. **Hunt Area 51.** All of Unit 51 and that portion of Unit 50 east of U.S. Highway 93. (3-30-01)~~
- ~~48. **Hunt Area 52.** All of Unit 52. (3-30-01)~~
- ~~49. **Hunt Area 52A.** All of Unit 52A. (Caution: See Craters of the Moon closure.) (3-30-07)~~
- ~~50. **Hunt Area 54.** All of Unit 54. (3-30-01)~~
- ~~51. **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 IDFG offices and at the National Park Service office in Almo. (3-30-07)~~
- ~~52. **Hunt Area 56.** All of Unit 56. (10-26-94)~~
- ~~53. **Hunt Area 57.** All of Unit 57. (3-30-01)~~
- ~~54. **Hunt Area 58.** All of Units 58, 59, and 59A. (3-15-02)~~
- ~~55. **Hunt Area 60-1.** All of Units 60, 62A, and that portion of Unit 60A beyond one (1) mile north and west of the North (Henrys) Fork of the Snake River. (3-30-07)~~
- ~~56. **Hunt Area 60-2.** All of Units 60, 61, and 62A. (3-30-07)~~
- ~~57. **Hunt Area 60X.** All of Units 60, 60A, 62, 63, 63A, 64, 65, 66, 67, and 69. (3-30-07)~~
- ~~58. **Hunt Area 61.** All of Unit 61. (3-20-97)~~
- ~~59. **Hunt Area 62.** All of Unit 62. (3-15-02)~~
- ~~60. **Hunt Area 64.** All of Unit 64 and that portion of Unit 67 north and east of State Highway 26. (7-1-99)~~
- ~~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. (3-30-07)~~
- ~~63. **Hunt Area 68A.** All of Unit 68A. (3-20-97)~~
- ~~64. **Hunt Area 69.** All of Unit 69. (3-30-07)~~
- ~~65. **Hunt Area 70.** All of Units 56, 70, 73, 73A, and 78. (3-30-07)~~
- ~~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.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

~~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. (3-30-07)~~

~~02. **Hunt Area 4.** All of Units 4 and 7. (3-20-97)~~

- ~~03. **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)~~
- ~~04. **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)~~
- ~~05. **Hunt Area 10A.** 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. (3-30-07)~~
- ~~06. **Hunt Area 11-1.** All of Unit 11. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~08. **Hunt Area 11A.** All of Unit 11A. (7-1-99)~~
- ~~09. **Hunt Area 13.** All of Unit 13. (3-30-01)~~
- ~~10. **Hunt Area 14.** That portion of Unit 14 north of 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 (Skookumehueck 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. (3-30-07)~~
- ~~11. **Hunt Area 18.** All of Unit 18. (3-30-01)~~
- ~~12. **Hunt Area 19A.** All of Unit 19A. (3-30-01)~~
- ~~13. **Hunt Area 21A.** All of Unit 21A. (3-30-07)~~
- ~~14. **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)~~
- ~~15. **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)~~
- ~~16. **Hunt Area 22-3.** All of Unit 22. (3-30-01)~~
- ~~17. **Hunt Area 23-1.** All of Unit 23. (10-26-94)~~
- ~~18. **Hunt Area 23-2.** That portion of Unit 23 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. (3-30-07)~~

~~19. **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)~~

~~20. **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)~~

~~21. **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. (3-30-07)~~

~~22. **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. (3-30-07)~~

~~23. **Hunt Area 24-3.** All of Unit 24. (4-5-00)~~

~~24. **Hunt Area 25.** All of Unit 25. (3-30-01)~~

~~25. **Hunt Area 28.** All of Unit 28. (3-30-07)~~

~~26. **Hunt Area 29-1.** All of Unit 29. (7-1-99)~~

~~27. **Hunt Area 29-2.** All of Units 29 and 37A. (7-1-99)~~

~~28. **Hunt Area 30.** All of Unit 30. (3-30-07)~~

~~29. **Hunt Area 30-1.** All of Units 30, 30A, 58, 59, and 59A. (7-1-99)~~

~~30. **Hunt Area 30A.** All of Unit 30A. (3-30-01)~~

~~31. **Hunt Area 31-1.** 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. (3-30-07)~~

~~32. **Hunt Area 31-2.** All of Unit 31. (3-30-07)~~

- ~~33. **Hunt Area 32-1.** That portion of Unit 32 east of the following boundary: Beginning at the 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. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~35. **Hunt Area 32A.** All of Unit 32A. (3-30-01)~~
- ~~36. **Hunt Area 33-1.** 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. (3-30-07)~~
- ~~37. **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)~~
- ~~38. **Hunt Area 36-1.** That portion of Unit 36 west of State Highway 75 and south of and including Redfish Lake Creek drainage. (3-30-07)~~
- ~~39. **Hunt Area 36-2.** That portion of Unit 36 not included in Hunt Area 36-1. (3-30-07)~~
- ~~40. **Hunt Area 36A.** All of Unit 36A. (3-30-07)~~
- ~~41. **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)~~
- ~~42. **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. (3-30-07)~~
- ~~43. **Hunt Area 36B.** All of Unit 36B. (4-5-00)~~
- ~~44. **Hunt Area 37.** All of Unit 37. (3-30-01)~~
- ~~45. **Hunt Areas 37A.** All of Unit 37A. (3-30-07)~~
- ~~46. **Hunt Area 39-1.** That portion of Unit 39 south and east of State Highway 21. (3-30-07)~~
- ~~47. **Hunt Area 39-2.** That portion of Unit 39 north and west of State Highway 21. (3-30-07)~~
- ~~48. **Hunt Area 39-3.** 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. (3-30-07)~~
- ~~49. **Hunt Area 40.** All of Units 40, and 42. (3-30-07)~~
- ~~50. **Hunt Area 43.** All of Unit 43. (3-30-01)~~
- ~~51. **Hunt Area 44-1.** All of Unit 44. (3-30-07)~~

- ~~52. **Hunt Area 44-2.** All of Units 44, 45, and 52. (3-30-07)~~
- ~~53. **Hunt Area 45.** All of Units 45 and 52. (3-30-01)~~
- ~~54. **Hunt Area 48-1.** All of Unit 48. (3-30-01)~~
- ~~55. **Hunt Area 48-2.** That portion of Unit 48 north Trail Creek and the Ketchum-Warm Springs Creek-Dollarhide Summit Road. (3-30-01)~~
- ~~56. **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. (3-30-07)~~
- ~~58. **Hunt Area 49.** All of Unit 49. (3-30-07)~~
- ~~59. **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. (3-30-07)~~
- ~~60. **Hunt Area 50-2.** 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 EXCLUDING the East Fork of the Big Lost River drainages and EXCLUDING south of the Antelope/Fish Creek Road. (3-30-07)~~
- ~~61. **Hunt Area 50-3.** That portion of Unit 50 south of the Antelope/Fish Creek Road. (3-30-07)~~
- ~~62. **Hunt Area 51.** All of Unit 51. (3-30-07)~~
- ~~63. **Hunt Area 52A.** All of Units 52A and 68. (Caution: See Craters of the Moon closure.) (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~66. **Hunt Area 56.** All of Unit 56. (3-30-07)~~
- ~~67. **Hunt Area 58-1.** All of Unit 58, 59, and 59A. (7-1-99)~~
- ~~68. **Hunt Area 58-2.** All of Unit 58. (7-1-99)~~
- ~~69. **Hunt Area 59.** All of Units 59 and 59A. (7-1-99)~~
- ~~70. **Hunt Area 60.** All of Units 60, 60A, 61, and 62A. (3-30-07)~~
- ~~71. **Hunt Area 60-1.** All of Units 60, 61, and 62A. (3-30-07)~~
- ~~72. **Hunt Area 60-2.** All of Units 60 and 60A. (3-30-07)~~
- ~~73. **Hunt Area 61.** All of Unit 61. (3-30-01)~~
- ~~74. **Hunt Area 62.** That portion of Unit 62 within the National Forest boundary and that portion of Unit 65 east of State Highway 33. (3-30-07)~~

- ~~75. **Hunt Area 62A.** All of Unit 62A. (3-30-07)~~
- ~~76. **Hunt Area 66X.** All of Units 66 and 69. (3-30-07)~~
- ~~77. **Hunt Area 66A.** All of Units 66A and 76. (3-30-01)~~
- ~~78. **Hunt Area 66A-1.** All of Unit 66A. (3-30-07)~~
- ~~79. **Hunt Area 70.** All of Units 70, 71, 72, 73, 73A, and 74. (3-30-01)~~
- ~~80. **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. (3-30-07)~~
- ~~81. **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. (3-30-07)~~
- ~~82. **Hunt Area 75.** All of Units 75, 77, and 78. (3-30-01)~~
- ~~83. **Hunt Area 76-1.** All of Unit 76. (3-30-07)~~
- ~~84. **Hunt Area 66A.** 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 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. (3-30-07)~~
- ~~85. **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. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~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. (3-30-07)~~

702. CONTROLLED HUNT AREA DESCRIPTIONS -- MOOSE.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

~~01. **Hunt Area 1-1.** That portion of Unit 1 within the Priest River drainage, and those portions of the Pend Oreille and Salmon River drainages downstream from the Priest River drainage. (3-15-02)~~

~~02. **Hunt Area 1-2.** That portion of Unit 1 within the following boundaries: beginning on U.S. Highway 95 bridge across the Pend Oreille River at Sandpoint, then northward along Route 95 to the Kootenai River at Bonner's Ferry, then northwesterly along the Kootenai River to the U.S. border, then west along the U.S. border to the Priest River-Kootenai River divide, then south along the Priest River-Pack River divide to Flat Top Mountain, then south along the divide separating the Priest River drainage and the Pend Oreille River drainage to Priest River, then east along the Pend Oreille River to the point of beginning. EXCEPT MYRTLE CREEK GAME PRESERVE~~

- ~~CLOSED.~~ (3-15-02)
- ~~03. **Hunt Area 1-3.** That portion of Unit 1 north and east of the Kootenai River. (3-15-02)~~
- ~~04. **Hunt Area 1-4.** That portion of Unit 1 south of the Kootenai River and east of U.S. Highway 95. EXCEPT THE DAVID THOMPSON GAME PRESERVE – CLOSED. (3-15-02)~~
- ~~05. **Hunt Area 2.** All of Unit 2. (4-3-95)~~
- ~~06. **Hunt Area 3.** All of Unit 3. (4-5-00)~~
- ~~07. **Hunt Area 4.** All of Units 4 and 4A. (4-5-00)~~
- ~~08. **Hunt Area 6.** All of Units 5 and 6. (7-1-98)~~
- ~~09. **Hunt Area 7.** All of Unit 7. (7-1-98)~~
- ~~10. **Hunt Area 8.** All of Unit 8. (3-15-02)~~
- ~~11. **Hunt Area 8A.** All of Unit 8A. (3-15-02)~~
- ~~12. **Hunt Area 9.** All of Unit 9. (4-3-95)~~
- ~~13. **Hunt Area 10-1.** That portion of Unit 10 within the Cayuse Creek drainage. (4-3-95)~~
- ~~14. **Hunt Area 10-2.** That portion of Unit 10 on the north side of the Kelly Creek drainage upstream from, but excluding, the Moose Creek drainage, and that portion on the south side of the Kelly Creek drainage upstream from, but excluding, the Cayuse Creek drainage. (4-3-95)~~
- ~~15. **Hunt Area 10-3.** That portion of Unit 10 on the north side of the Kelly Creek drainage upstream from its mouth to and including the Moose Creek drainage, and the North Fork of the Clearwater River drainage upstream from the mouth of Kelly Creek. (4-3-95)~~
- ~~16. **Hunt Area 10-4.** That portion of Unit 10 within the Fourth of July Creek drainage, that portion on the south side of the North Fork of the Clearwater River from the mouth of Fourth of July Creek upstream to the mouth of Kelly Creek, and the south side of the Kelly Creek drainage from its mouth upstream to, but excluding, the Cayuse Creek drainage. (4-3-95)~~
- ~~17. **Hunt Area 10-5.** That portion of Unit 10 within the Weitas Creek drainage (a tributary of the upper North Fork of the Clearwater River), and the drainages on the southwest side of the North Fork of the Clearwater River from the Weitas Creek drainage to, but excluding, the Fourth of July Creek drainage. (4-3-95)~~
- ~~18. **Hunt Area 10-6.** That portion of Unit 10 on the north side of the North Fork of the Clearwater River drainage downstream from the mouth of Kelly Creek. (3-15-02)~~
- ~~19. **Hunt Area 10A-1.** That portion of Unit 10A within the following boundary: Beginning at the junction of the Unit 10A boundary with Forest Service Road 250 along the North Fork of the Clearwater River, then west along Forest Service Road 250 to Forest Service Road 669, then west and south along Forest Service Road 669 to Highway 11 at Pierce, then south on Highway 11 to Forest Service Road 100, then south on Forest Service Road 100 to the Clearwater National Forest boundary, then south along the Clearwater National Forest boundary to the Unit 10A boundary, then north along the Unit 10A boundary to the point of beginning. (3-15-02)~~
- ~~20. **Hunt Area 10A-2.** That portion of Unit 10A within the following boundary: Beginning at the junction of Unit 10A boundary with Forest Service Road 247, then south on Forest Service Road 247 to Forest Service Road 251, then south on Forest Service Road 251 to Forest Service Road 246, then southwest on Forest Service Road 246 to State Highway 11 at Headquarters, then south on Highway 11 to Forest Service Road 669 at Pierce, then northeast on Forest Service Road 669 to Forest Service Road 250, then northeast on Forest Service Road~~

~~250, to the Unit 10A boundary, then north and east along the Unit 10A boundary to the point of beginning. (4-3-95)~~

~~21. **Hunt Area 10A-3.** That portion of Unit 10A within the following boundary: Beginning at the Grandad Bridge on the Unit 10A boundary, then south and east along the Silver Creek Casey Creek Road to Forest Service Road 247, then south on Forest Service Road 247 to Forest Service Road 246 at Headquarters, then northeast on Forest Service Road 246 to Forest Service Road 251, then north on Forest Service Road 251 to Forest Service Road 247, then north on Forest Service Road 247 to the Unit 10A boundary at the North Fork of the Clearwater River, then west on the Unit 10A boundary to the point of beginning. (7-1-98)~~

~~22. **Hunt Area 10A-4.** That portion of Unit 10A north of Forest Service Road 1705 from Elk River to Grandad Bridge and north and west of Dworshak Reservoir and the Little North Fork of the Clearwater River. (4-3-95)~~

~~23. **Hunt Area 10A-5.** That portion of Unit 10A south of Forest Road 1705 from Elk River to Grandad Bridge and north and west of Dworshak Reservoir. (4-5-00)~~

~~24. **Hunt Area 12-1.** That portion of Unit 12 north of the Lochsa River from and including the Lost Creek drainage upstream to, but excluding the Crooked Fork drainage. (7-1-98)~~

~~25. **Hunt Area 12-2.** That portion of Unit 12 within the Crooked Fork Creek drainage and north of White Sand Creek upstream to and including the Storm Creek drainage. (3-15-02)~~

~~26. **Hunt Area 12-3.** That portion of Unit 12 south of the Lochsa River from and including the Old Man Creek drainage upstream to and including the Mocus Creek drainage. (3-15-02)~~

~~27. **Hunt Area 12-4.** That portion of Unit 12 south of the Lochsa River from, but excluding, the Mocus Creek drainage, upstream to and including the Cliff Creek drainage. (3-15-02)~~

~~28. **Hunt Area 12-5.** That portion of Unit 12 within the Walton Creek drainage, that portion on the south side of White Sand Creek upstream to the mouth of Storm Creek, and all of White Sand Creek drainage upstream from, but excluding, the Storm Creek drainage. (3-15-02)~~

~~29. **Hunt Area 12-6.** That portion of Unit 12 north of the Middle Fork of the Clearwater River from the Smith Creek Road (Forest Service Road 101) upstream to the mouth of the Lochsa River, that portion on the north side of the Lochsa River upstream to, but excluding, the Lost Creek drainage, and that portion on the south side of the Lochsa River from its mouth upstream to, but excluding, the Old Man Creek drainage. (3-15-02)~~

~~30. **Hunt Area 14-1.** That portion of Unit 14 north and west of the following boundary: 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. (4-5-00)~~

~~31. **Hunt Area 14-2.** That portion of Unit 14 south of the following: 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. (4-5-00)~~

~~32. **Hunt Area 15-1.** That portion of Unit 15 north of the South Fork of the Clearwater River from and including the American River drainage downstream to and including the Newsome Creek drainage. (3-15-02)~~

~~33. **Hunt Area 15-2.** That portion of Unit 15 South of the South Fork of the Clearwater River downstream from and including the Crooked River drainage upstream to and including the Red River drainage. (3-15-02)~~

~~34. **Hunt Area 15-3.** That portion of Unit 15 on the south and west sides of the South Fork of the Clearwater River downstream from, but excluding, the Crooked River drainage. (4-3-95)~~

~~35. **Hunt Area 15-4.** That portion of Unit 15 north and east of the South Fork of the Clearwater River from and including the Sally Ann Creek drainage upstream to and including the Leggett Creek drainage. (3-15-02)~~

- 36. ~~Hunt Area 16-1.~~ That portion of Unit 16 north and west of the Hamby Creek Road (Forest Service Road 651), and that portion south and west of the Selway River from its mouth upstream to the Hamby Creek Road. (4-3-95)**
- 37. ~~Hunt Area 16-2.~~ That portion of Unit 16 south and east of Hamby Creek Road (Forest Service Road 651), and that portion north and east of the Selway River from its mouth upstream to Fog Mountain Road (Forest Service Road 319). (4-3-95)**
- 38. ~~Hunt Area 16A-1.~~ That portion of Unit 16A north and west of the following boundary: Beginning at Anderson Butte, then east along the Drive Ridge Trail (Forest Service Trail 809) to the Meadow Creek Trail (Forest Service Trail 726), then east along the Meadow Creek Trail to the Disgrace Butte Vermilion Peak Trail (Forest Service Trail 609), then northeast along the Disgrace Butte Vermilion Peak Trail to the Buck Lake Creek-Drake Creek Trail (Forest Service Trail 628), then northeast along the Buck Lake Creek-Drake Creek Trail to the Unit 16A boundary at Drake Saddle. (4-3-95)**
- 39. ~~Hunt Area 16A-2.~~ That portion of Unit 16A south and east of the following boundary: Beginning at Anderson Butte, then east along the Drive Ridge Trail (Forest Service Trail 809) to the Meadow Creek Trail (Forest Service Trail 726), then east along the Meadow Creek Trail to the Disgrace Butte Vermilion Peak Trail (Forest Service Trail 609), then northeast along the Disgrace Butte Vermilion Peak Trail to the Buck Lake Creek-Drake Creek Trail (Forest Service Trail 628), then northeast along the Buck Lake Creek-Drake Creek Trail to the Unit 16A boundary at Drake Saddle. (4-3-95)**
- 40. ~~Hunt Area 17-1.~~ That portion of Unit 17 north of the Selway River from Fog Mountain Road (Forest Service Road 319) upstream to and including the west side of the Moose Creek drainage, the North Fork Moose Creek drainage, and the north side of the East Fork Moose Creek drainage upstream to, but excluding, Cedar Creek. (3-15-02)**
- 41. ~~Hunt Area 17-2.~~ That portion of Unit 17 east of the Selway River from the mouth of Moose Creek upstream to and including the Bear Creek drainage, and that portion on the east side of the Moose Creek and East Fork Moose Creek drainages from the mouth of Moose Creek upstream to and including the Cedar Creek drainage. (3-15-02)**
- 42. ~~Hunt Area 17-3.~~ That portion of Unit 17 south and west of the Selway River from and including the Mink Creek drainage upstream to and including the Goat Creek drainage. (3-15-02)**
- 43. ~~Hunt Area 17-4.~~ That portion of Unit 17 west of the Selway River from, but excluding the Goat Creek drainage, upstream to Forest Service Road 468. (3-15-02)**
- 44. ~~Hunt Area 17-5.~~ That portion of Unit 17 east of the Selway River upstream from, but excluding the Bear Creek drainage to Forest Service Road 468; all of the Selway River drainage south of Forest Service Road 468. (3-15-02)**
- 45. ~~Hunt Area 19-1.~~ That portion of Unit 19 outside the Gospel Hump Wilderness boundary. (4-3-95)**
- 46. ~~Hunt Area 19-2.~~ That portion of Unit 19 within the Gospel Hump Wilderness boundary. (4-3-95)**
- 47. ~~Hunt Area 19A.~~ All of Unit 19A. (4-5-00)**
- 48. ~~Hunt Area 20-1.~~ That portion of Unit 20 within South Fork of Red River, the Big Mallard Creek and Little Mallard Creek drainages and the Salmon River drainage from the Big Mallard drainage to but EXCLUDING the Bargamin Creek drainage. (4-3-95)**
- 49. ~~Hunt Area 20-2.~~ That portion of Unit 20 within the Bargamin Creek drainage, and that portion on the north side of the Salmon River to, but excluding, the Sabe Creek drainage. (4-3-95)**
- 50. ~~Hunt Area 20-3.~~ That portion of Unit 20 within the Sabe Creek drainage. (4-3-95)**

- 51. ~~Hunt Area 20-4.~~ That portion of Unit 20 from the Mackay Bar Road (Forest Service Road 222) upstream to and including the Elkhorn Creek drainage. (4-3-95)**
- 52. ~~Hunt Area 20A-1.~~ That portion of Unit 20A east of the following Forest Service trails: Beginning at the Salmon River on Forest Service Trail 039, then south on Trail 039 to Forest Service Trail 038, then south on Trail 038 to Forest Service Trail 002, then south on Trail 002 to the south boundary of Unit 20A. (4-3-95)**
- 53. ~~Hunt Area 20A-2.~~ That portion of Unit 20A within the following boundary: Beginning at the Salmon River on Forest Service Trail 033, then south on Trail 033 to Forest Service Trail 007, then southwest on Trail 007 to the south boundary of Unit 20A, then east on the Unit 20A boundary to Forest Service Trail 002 to Forest Service Trail 038, then northeast on Trail 038 to Forest Service Trail 039, then northeast on Trail 039 to the Salmon River, then northwest on the unit boundary to Forest Service Trail 033, the point of beginning. (4-3-95)**
- 54. ~~Hunt Area 20A-3.~~ That portion of Unit 20A north and west of the following Forest Service trails: Beginning at the Salmon River on Forest Service trail 033, then southwest on Trail 033 to Forest Service Trail 007, then southwest on Trail 007 to the south boundary of Unit 20A. (4-3-95)**
- 55. ~~Hunt Area 21.~~ All of Units 21 and 21A. (4-3-95)**
- 56. ~~Hunt Area 25.~~ All of Unit 25. (4-5-00)**
- 57. ~~Hunt Area 26.~~ That portion of Unit 26 on the north side of Big Creek downstream from, but excluding, the Smith Creek drainage, and the south side of Big Creek downstream from and including the Little Marble Creek drainage. (7-1-98)**
- 58. ~~Hunt Area 29.~~ All of Units 29, 30, 30A, and 37A. (3-15-02)**
- 59. ~~Hunt Area 44.~~ That portion of Unit 44 east of the Fairfield-Couch Summit Five Points Road, and all of Units 48 and 49. (3-15-02)**
- 60. ~~Hunt Area 50.~~ All of Unit 50. (4-3-95)**
- 61. ~~Hunt Area 51.~~ All of Unit 51. (4-5-00)**
- 62. ~~Hunt Area 56.~~ All of Units 56, 73, and 73A. (4-5-00)**
- 63. ~~Hunt Area 59.~~ All of Units 59 and 59A. (4-3-95)**
- 64. ~~Hunt Area 60.~~ All of Unit 60. (4-3-95)**
- 65. ~~Hunt Area 60A.~~ That portion of Unit 60A south and east of the North Fork (Henrys Fork) of the Snake River, and that portion within one (1) mile north and west of the North Fork of the Snake River. (3-15-02)**
- 66. ~~Hunt Area 61-1.~~ That portion of Unit 61 west of East Dry Creek and Yale-Kilgore Roads. (4-3-95)**
- 67. ~~Hunt Area 61-2.~~ That portion of Unit 61 east of East Dry Creek and Yale-Kilgore Ro76ads and west of U.S. 191-20 and south and west of State Highway 87. (4-3-95)**
- 68. ~~Hunt Area 61-3.~~ That portion of Unit 61 north of State Highway 87 and that portion east of U.S. Highway 191-20 EXCEPT that portion enclosed by the Big Springs Loop Road and U.S. Highway 191-20. (4-3-95)**
- 69. ~~Hunt Area 62.~~ All of Unit 62. (4-3-95)**
- 70. ~~Hunt Area 62A.~~ All of Unit 62A. (4-3-95)**
- 71. ~~Hunt Area 63A.~~ All of Units 63 and 63A. (3-15-02)**

72. ~~Hunt Area 64. All of Unit 64.~~ (3-15-02)
73. ~~Hunt Area 65. All of Unit 65.~~ (4-3-95)
74. ~~Hunt Area 66-1. That portion of Unit 66 north of main Bear Creek EXCEPT the Pritchard and Garden Creek drainages.~~ (4-3-95)
75. ~~Hunt Area 66-2. That portion of Unit 66 south of main Bear Creek.~~ (4-3-95)
76. ~~Hunt Area 66-3. All of Units 66 and 69.~~ (4-5-00)
77. ~~Hunt Area 66A. All of Unit 66A.~~ (3-15-02)
78. ~~Hunt Area 67-1. That portion of Unit 67 north and west of State Highway 31.~~ (4-3-95)
79. ~~Hunt Area 67-2. That portion of Unit 67 south and east of State Highway 31.~~ (4-3-95)
80. ~~Hunt Area 69-1. That portion of Unit 69 west of the Grays Lake-Long Valley-Bone-Iona Road.~~ (4-3-95)
81. ~~Hunt Area 69-2. That portion of Unit 69 east of the Grays Lake-Long Valley-Bone-Iona Road EXCEPT the Antelope and Granite Creek drainages.~~ (4-3-95)
82. ~~Hunt Area 69-3. That portion of Unit 69 within the Antelope and Granite Creek drainages, and that portion of Unit 66 within the Pritchard and Garden Creek drainages.~~ (4-3-95)
83. ~~Hunt Area 70. All of Unit 70.~~ (4-3-95)
84. ~~Hunt Area 71-1. That portion of Unit 71 located in Bannock and Bingham counties.~~ (4-3-95)
85. ~~Hunt Area 71-2. That portion of Unit 71 located in Caribou County.~~ (4-3-95)
86. ~~Hunt Area 72. All of Unit 72.~~ (4-3-95)
87. ~~Hunt Area 74. All of Unit 74.~~ (4-3-95)
88. ~~Hunt Area 75. All of Unit 75.~~ (3-15-02)
89. ~~Hunt Area 76-1. That portion of Unit 76 within the following boundary: Beginning at Soda Springs on State Highway 34, then northeast to the Lanes Creek Road at Wayan, then south along the Lanes Creek-Diamond Creek Road to Timber Creek Road, then northeast along Timber Creek-Smoky Canyon-Stump Creek Road to the Idaho-Wyoming state line, then south along the state line to the Crow Creek Road, then southwest along Crow Creek-Wells Canyon-Georgetown Canyon Road to U.S. 30, then north along U.S. 30 to Soda Springs, the point of beginning.~~ (3-15-02)
90. ~~Hunt Area 76-2. That portion of Unit 76 south of the Georgetown-Wells Canyon-Crow Creek Road.~~ (3-15-02)
91. ~~Hunt Area 76-3. That portion of Unit 76 north and east of the following boundary: Beginning at the Idaho-Wyoming state line, then west along the Stump Creek-Smoky Canyon-Timber Creek Road to the Diamond Creek Road, then north along the Diamond Creek-Lanes Creek Road to State Highway 34 at Wayan.~~ (3-15-02)
92. ~~Hunt Area 77. All of Unit 77.~~ (4-3-95)
93. ~~Hunt Area 78. All of Unit 78.~~ (4-3-95)

703. CONTROLLED HUNT AREA DESCRIPTIONS -- ANTELOPE.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

- ~~01. **Hunt Area 29.** All of Unit 29 except the Poison Creek drainage. (3-30-07)~~
- ~~02. **Hunt Area 30.** All of Unit 30 and that portion of Unit 21A south and east of Carmen Creek Road. (3-30-07)~~
- ~~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.** All of Unit 37 and 37A, and that part of Unit 29 in the Poison Creek drainage. (3-30-07)~~
- ~~07. **Hunt Area 39.** That portion of Unit 39 south and east of Highway 21. (3-30-07)~~
- ~~08. **Hunt Area 40.** All of Unit 40. (10-26-94)~~
- ~~09. **Hunt Area 41.** That portion of Unit 41 east of State Highway 51. (10-26-94)~~
- ~~10. **Hunt Area 42.** That portion of Unit 41 west of State Highway 51 and all of Unit 42. (10-26-94)~~
- ~~11. **Hunt Area 44.** All of Unit 44 and that portion of Unit 45 within the Camas Creek drainage. (10-26-94)~~
- ~~12. **Hunt Area 45 1.** All of Unit 45 EXCLUDING that portion within the Camas Creek drainage. (3-30-07)~~
- ~~13. **Hunt Area 45 2.** Private land within Unit 45 EXCLUDING that portion within the Camas Creek drainage. (3-30-07)~~
- ~~14. **Hunt Area 46 1.** All of Unit 46. (3-30-07)~~
- ~~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. (3-30-07)~~
- ~~16. **Hunt Area 47.** All of Unit 47. (10-26-94)~~
- ~~17. **Hunt Area 49.** All of Unit 49. (3-30-07)~~
- ~~18. **Hunt Area 50.** All of Unit 50. (See Craters of the Moon closure.) (3-30-07)~~
- ~~19. **Hunt Area 51.** All of Unit 51 and that portion of Unit 63 within Butte County. (3-30-07)~~
- ~~20. **Hunt Area 52.** All of Units 48 and 52. (3-30-07)~~
- ~~21. **Hunt Area 52A.** All of Units 52A and 53. (See Craters of the Moon closure.) (3-30-07)~~
- ~~22. **Hunt Area 54.** All of Unit 54. (3-13-96)~~
- ~~23. **Hunt Area 58.** All of Unit 58. (3-30-07)~~

- ~~24. **Hunt Area 59.** All of Units 59 and 59A. (3-20-96)~~
- ~~25. **Hunt Area 60A.** All of Units 60 and 60A, and that portion of Unit 61 west of Hotel Creek. (3-20-96)~~
- ~~26. **Hunt Area 61.** That portion of Unit 61 east of Hotel Creek. (10-26-94)~~
- ~~27. **Hunt Area 63-1.** That portion of Unit 63 south of State Highway 33. (3-30-07)~~
- ~~28. **Hunt Area 63-2.** That portion of Unit 63 north of State Highway 33, EXCLUDING the Camas National Wildlife Refuge which is CLOSED. (3-30-07)~~
- ~~29. **Hunt Area 68.** All of Unit 68. (10-26-94)~~

704. CONTROLLED HUNT AREA DESCRIPTIONS -- ROCKY MOUNTAIN BIGHORN SHEEP.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

- ~~01. **Hunt Area 11.** That portion of Unit 11 that drains into the Snake River downstream from, but excluding, the Corral Creek drainage to, but excluding, the Tenmile Creek Canyon drainage. (3-15-02)~~
- ~~02. **Hunt Area 19.** Those portions of Units 14, 19 and 20 from the Red River Ranger Station White River Ranch Road (Forest Service Road 421) downstream to and including the Wind River drainage. (3-15-02)~~
- ~~03. **Hunt Area 20-1.** That portion of Unit 20 upstream from Sabe Creek, that portion of Unit 21 downstream from the Horse Creek Trail (Forest Service Trail 159) and Reynolds Creek Trail (Forest Service Trail 067) and that portion of Unit 17 upstream from the Witter Ridge Trail (Forest Service Trail 75) and the Thompson Flat Wood Hump Surprise Creek Trail (Forest Service Trail 031). (7-1-98)~~
- ~~04. **Hunt Area 20-2.** That portion of Unit 20 downstream from the Nez Perce Bitterroot Forest boundary along Sabe Creek to the Red River Ranger Station White Water Ranch Road. (7-1-98)~~
- ~~05. **Hunt Area 20A.** Those portions of Unit 20A upstream from and including the Butts Creek drainage to the Middle Fork of the Salmon River, and within the Middle Fork of the Salmon River drainage upstream to Papoose Creek Papoose Lake Coyote Springs. (7-1-98)~~
- ~~06. **Hunt Area 21.** That portion of Unit 21 downstream from the Spring Creek Road (Forest Service Road 038) to the Horse Creek Trail (Forest Service Trail 159) and Reynolds Creek Trail (Forest Service Trail 067). (7-1-98)~~
- ~~07. **Hunt Area 26.** All of Unit 26 and that portion of Unit 20A within the Middle Fork of the Salmon River drainage upstream from Papoose Creek Papoose Lake Coyote Springs and that portion of Unit 27 on the west side of the Middle Fork of the Salmon River from Big Creek upstream to and including the Brush Creek drainage. (7-1-98)~~
- ~~08. **Hunt Area 27-1.** That portion of Unit 27 west of the Middle Fork of the Salmon River upstream from but excluding the Brush Creek drainage to and including the Indian Creek drainage. (7-1-98)~~
- ~~09. **Hunt Area 27-2.** That portion of Unit 27 east of the Middle Fork of the Salmon River upstream from its mouth to the Waterfall Creek Trail (Forest Service Trail 045). (7-1-98)~~
- ~~10. **Hunt Area 27-3.** That portion of Unit 27 east of the Middle Fork of the Salmon River upstream from the Waterfall Creek Trail (Forest Service Trail 045) to and including the Camas Creek drainage on the north side of Camas Creek, and that portion of Unit 28 within the Camas Creek drainage north of Camas Creek and west of the Silver Creek Meyers Cove Road (Forest Service Road 108). (7-1-98)~~
- ~~11. **Hunt Area 27-4.** That portion of Unit 27 within the Loon Creek drainage; that portion of Unit 27~~

~~east of the Middle Fork of the Salmon River, south of Camas Creek, and northwest of Fly Creek Trail (Forest Service Trail 124), that portion of Unit 36 within the Yankee Fork drainage. (3-15-02)~~

~~12. **Hunt Area 28.** That portion of Unit 28 within the Pine Creek and Panther Creek drainages, and the south side of the main Salmon River from Pine Creek downstream to, but excluding, the Middle Fork of the Salmon River drainage. (4-5-00)~~

~~13. **Hunt Area 30.** All of Units 30 and 30A. (3-15-02)~~

~~14. **Hunt Area 36B.** All of Unit 36B; that portion of Unit 28 south of and including the Hat Creek drainage; that portion of Unit 28 west of the Panther Creek Road and south of the Silver Creek-Meyers Cove Road; and that portion of Unit 27 southeast of Fly Creek Trail (Forest Service Trail 124) and northeast of the Sleeping Deer Road (Forest Service Road 086). (3-15-02)~~

~~15. **Hunt Area 37.** All of Unit 37. That portion of Unit 50 east of U.S. Highway 93 and that portion of Unit 51 west of the Howe-Goldburg Road. (7-1-98)~~

705. CONTROLLED HUNT AREA DESCRIPTIONS -- MOUNTAIN GOAT.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

~~01. **Hunt Area 10-1.** That portion of Unit 10 within the Isabella Creek drainage. (4-3-95)~~

~~02. **Hunt Area 10-2.** That portion of Unit 10 within the Collins Creek drainage. (4-3-95)~~

~~03. **Hunt Area 18.** Those portions of Units 18 and 22 within the Snake River drainage from and including Brush Creek drainage downstream to and including the Sheep Creek drainage, and that portion of Unit 23 within the Rapid River drainage. (7-1-98)~~

~~04. **Hunt Area 27-1.** That portion of Unit 27 south of Forest Service Road 172 from Loon Creek summit to Loon Creek guard station, Pinyon Peak, and Feltman Creek Point, and that portion of Unit 36 from Forest Service Road 172 west to the Pioneer Creek-West Fork Yankee Fork Trail (Forest Service Trail 113-155.) (3-15-02)~~

~~05. **Hunt Area 27-2.** That portion of Unit 27 east of the Middle Fork of the Salmon River, south of Camas Creek, northwest of Fly Creek Trail (Forest Service Trail 124) and Mahoney Creek Trail (Forest Service Trail 121), north of Warm Springs Creek and north of Loon Creek. (3-15-02)~~

~~06. **Hunt Area 27-3.** That portion of Unit 27 east of the Middle Fork of the Salmon River and north of Camas Creek to the Waterfall Creek Trail (Forest Service Trail 045) and that portion of Unit 28 within the Yellowjacket Creek drainage. (3-15-02)~~

~~07. **Hunt Area 30.** Those portions of Units 21A and 30 south of and including the Freeman Creek drainage to the Agency Creek-Lemhi Pass Road. (4-3-95)~~

~~08. **Hunt Area 36A-1.** That portion of Unit 50 north of Trail Creek Road and west of U.S. 93, and that portion of Unit 36A south and east of the East Fork of the Salmon River from and including the Herd Creek drainage upstream to and including the West Pass Creek drainage. (3-15-02)~~

~~09. **Hunt Area 36A-2.** That portion of Unit 36A, including all headwaters of the East Fork of the Salmon River upstream from, but excluding, the Germania Creek drainage on the west and upstream from, but excluding, the West Pass Creek drainage on the east. (4-3-95)~~

~~10. **Hunt Area 36A-3.** That portion of Unit 36A, north and west of the East Fork of the Salmon River downstream from, but excluding, the Germania Creek drainage, and that portion of Unit 36 on the south and east sides of the main Salmon River downstream from, but excluding, the Fourth of July Creek drainage above Stanley. (4-3-95)~~

~~11. **Hunt Area 36A-4.** That portion of Unit 36A within the Germania Creek drainage, and that portion of Unit 36 within the Salmon River drainage east of State Highway 75 from and including the Fourth of July Creek drainage upstream to and including the Pole Creek drainage. (4-3-95)~~

~~12. **Hunt Area 36B.** That portion of Unit 36B south of and including the Challis Creek drainage; that portion of Unit 36 east of the Yankee Fork Mill Creek Summit Road. (4-3-95)~~

~~13. **Hunt Area 48.** That portion of Unit 48 north and east of State Highway 75 and that portion south and west of State Highway 75 upstream from and including the Baker Creek drainage. (4-3-95)~~

~~14. **Hunt Area 50.** All of Unit 49 and that portion of Unit 50 south and east of the Trail Creek Road and south and west of U.S. Highway 93. (3-15-02)~~

~~15. **Hunt Area 51.** That portion of Unit 29 south of and excluding the Big Timber Creek drainage, that portion of Unit 51 east of the Howe-Goldburg Road and that portion of Unit 58 west of State Highway 28. (4-3-95)~~

~~16. **Hunt Area 59A.** All of Unit 59A and that portion of Unit 58 east of State Highway 28. (7-1-98)~~

~~17. **Hunt Area 67.** All of Unit 67. (3-15-02)~~

706. CONTROLLED HUNT AREA DESCRIPTIONS -- CALIFORNIA BIGHORN SHEEP.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

~~01. **Hunt Area 41.** That portion of Unit 41 within the Big Jack Creek drainage. (3-15-02)~~

~~02. **Hunt Areas 42-1, and 42-2.** All of Unit 42 and that portion of Unit 41 within the East Fork and South Fork of the Owyhee River drainages outside the Duck Valley Indian Reservation boundary. (3-15-02)~~

707. CONTROLLED HUNT AREA DESCRIPTIONS - BLACK BEAR.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-12-07)T

~~01. **Hunt Area 1.** That portion of Unit 1 within the Priest River drainage, south of and including the Lamb Creek drainage to the west of Priest Lake, and south of and including the Soldier Creek drainage to the east of Priest Lake. (10-26-94)~~

~~02. **Hunt Areas 22-1 and 22-2.** All of Units 22 and 31. (10-26-94)~~

~~03. **Hunt Areas 32-1 and 32-2.** All of Units 32 and 32A. (10-26-94)~~

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0702P

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 2007 Big Game Seasons establishing seasons and limits for deer, elk, antelope, black bear and mountain lion 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 held as follows:

November 14, 2007 -- 7 p.m. (Approximate Time)
Bonner County Wildlife Building
4203 N. Boyer
Sandpoint, Idaho

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).

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

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0703P

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 2007 and 2008 Moose, Bighorn Sheep and Mountain Goat Seasons establishing seasons and limits for hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be held as follows:

November 14, 2007 -- 7 p.m. (Approximate Time)
Bonner County Wildlife Building
4203 N. Boyer
Sandpoint, Idaho

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).

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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 17, 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 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 17, 2007.

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:

Increase the number and type of turkey tags available. Allow Department sponsored youth waterfowl hunts at the Hagerman Wildlife Management Area. Amend references to the WMA pheasant permit to the WMA Upland Game Bird Permit to be consistent with statutory amendment (S 1010). Delete obsolete hunting area descriptions for Chukar Partridge, Gray Partridge, and Quail.

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 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 2007 hunting seasons.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tom Hemker (208) 287-2749 and 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 24, 2007.

DATED this 21st day of August, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut, Boise
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-0701

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse. The validation shall be valid from January 1 through December 31 of each year. (3-30-01)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, common snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (7-1-98)

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are four (4) turkey tags available each calendar year. These are the *spring* general tag, *spring controlled extra* tag, *late-spring/fall general controlled depredation* tag, and *fall-controlled special unit* tag. Only three (3) turkey tags of the following may be purchased each year: general, extra, and controlled depredation. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring. (~~5-3-03~~)(5-17-07)T

b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit/tag to hunt in any other wild turkey hunt. (4-5-00)

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: 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 February 15, annually. Applications must comply with the following requirements: (2-7-95)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. If you are successful, you will be issued a permit that entitles you to purchase the appropriate controlled hunt tag, beginning April 1, at any license vendor or Fish and Game office by presenting your hunting license and controlled hunt permit.

(7-1-98)

iv. A single payment (either cashier's check, money order, certified check, or 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. (7-1-98)

v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (7-1-98)

vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)

vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)

f. Drawing information: 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)

g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)

h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)

i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

04. Early September Canada Goose Hunts. (7-1-98)

a. Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements: (7-1-98)

i. Applications: 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 July 15, annually. Applications must comply with the following requirements: (4-5-00)

ii. Fees: All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. The Federal Migratory Bird Stamp is required by any person seventeen (17) years of age and older, respectively (Title 50 Code of Federal Regulations, Part 20). (3-30-01)

iii. The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f. (3-30-01)

iv. Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

400. AREAS CLOSED TO HUNTING OF GAME BIRDS.

01. General. Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

- a.** That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)
- b.** Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to the river). (3-20-97)
- c.** Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)
- d.** Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)
- e.** That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)
- f.** Yellowstone National Park in Fremont County. (7-1-93)
- g.** Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)
- h.** Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18 and west of Pebble Lane (Roswell Marsh segment). (5-3-03)
- i.** On any of those portions of federal refuges, State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)
- j.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)
- 02. Migratory Game Birds.** In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)
- a.** Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)
- b.** Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored youth waterfowl hunts. (~~7-1-93~~)(5-17-07)T

c. Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

d. Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

e. Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

f. Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

g. Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

h. Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

03. Geese. Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

a. Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

b. Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East

Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. (12-7-94)

c. Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.

01. Area 1. Area 1 includes Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

02. Area 2. Area 2 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Minidoka, Oneida, Power, Twin Falls, and Teton counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

03. Area 3. Area 3 includes Ada, Adams, Boise, Blaine, Camas, Canyon, Elmore, Gem, Gooding, Jerome, Lincoln, Owyhee, Payette, Twin Falls, Valley, and Washington Counties (including all islands in the Snake River EXCEPT PATCH AND PORTER ISLANDS). Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

04. WMA ~~Pheasant~~ Upland Game Permit. (~~10-26-94~~)(5-17-07)T

a. Permit Requirement. Any person seventeen (17) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Pheasant Permit in his or her possession. (4-6-05)

b. Permit Limit. The WMA ~~Pheasant~~ Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (~~5-3-03~~)(5-17-07)T

c. Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.04.a. must immediately record their harvest, in writing, on the back of their permit. (4-6-05)

05. Youth Pheasant Season. This season shall be open statewide. (7-1-99)

a. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and

license vendors.

(4-6-05)

b. The Youth Pheasant Season shall be open for all licensed hunters fifteen (15) years of age or younger. All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter. (5-3-03)

601. CHUKAR PARTRIDGE SEASONS, BAG AND POSSESSION LIMITS.

~~01. Area 1. Area 1 includes, Ada, Adams, Benewah, Boise, Bonners, Boundary, Canyon, Clearwater, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Washington, Owyhee County west of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)(5-17-07)T~~

~~02. Area 2. Area 2 includes, Lemhi County, not including Birch Creek Valley, and Custer County in the Salmon River drainage. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~03. Area 3. Area 3 includes, Fremont, Clark, Lemhi County within Birch Creek Valley, Custer County within the big Lost Valley and the Little Lost Valley, Blaine, Camas, Owyhee County east of the following boundary; beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

602. GRAY PARTRIDGE SEASONS, BAG AND POSSESSION LIMITS.

~~01. Area 1. Area 1 includes, Ada, Adams, Benewah, Boise, Bonners, Boundary, Canyon, Clearwater, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Washington, Owyhee County west of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)(5-17-07)T~~

~~02. Area 2. Area 2 includes, Lemhi County, not including Birch Creek Valley, and Custer County in the Salmon River drainage. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~03. Area 3. Area 3 includes, Fremont, Clark, Lemhi County within Birch Creek Valley, Custer County within the big Lost Valley and the Little Lost Valley, Blaine, Camas, Owyhee County east of the following boundary; beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

603. BOBWHITE QUAIL AND CALIFORNIA QUAIL SEASONS, BAG AND POSSESSION LIMITS.

01. Area 1. Area 1 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton Counties. Season for quail in Area 1 is CLOSED. (5-3-03)

~~02. Area 2. Area 2 includes Ada, Adams, Benewah, Blaine, Boise, Bonner, Boundary, Camas, Canyon, Cassia, Clearwater, Gem, Gooding, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Jerome, Lincoln, Minidoka, Twin Falls, Elmore, Washington, and Owyhee Counties west of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)(5-17-07)T~~

~~03. Area 3. Area 3 includes Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls counties, and also included is that portion of Owyhee County east of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.12 - RULES GOVERNING COMMERCIAL FISHING IN THE STATE OF IDAHO

DOCKET NO. 13-0112-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 21, 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 Sections 36-104(b) and 36-804, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

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 commercial species list to add Lake whitefish, delete several species, and correct the names of several species. Allow for the use of gill nets and define gill net requirements.

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 commercial fisherman.

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 lack of an identifiable representative for commercial fisherman.

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 24, 2007.

DATED this 21st day of August, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut, Boise
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715 / Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0112-0701

010. DEFINITIONS.

01. Commercial Fishing. Fishing for, taking, or transporting fish or crustacea for the purpose of selling, bartering, exchanging, offering or exposing for sale. (7-1-93)

02. Commercial Fish Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03 of this rule, only the following fish species may be taken for commercial purposes: (4-6-05)

- ~~a.~~ *Bluehead sucker -- Catostomus discobolus.* (7-1-93)
- ~~b.~~ Bridgelip sucker -- *Catostomus columbianus.* (7-1-93)
- ~~e.~~ Common Carp -- *Cyprinus carpio.* (~~7-1-93~~)(5-21-07)T
- ~~d.~~ Chiselmouth -- *Acrocheilus alutaceus.* (~~7-1-93~~)(5-21-07)T
- ~~e.~~ Fathead minnow -- *Pimephales promelas.* (7-1-93)
- ~~f.~~ Goldfish -- *Carassius auratus.* (7-1-93)
- ~~f.~~ Lake trout -- *Salvelinus namaycush.* (5-21-07)T
- ~~g.~~ Lake whitefish -- *Coregonus clupeaformis.* (5-21-07)T
- ~~g.~~ *Lake chub -- Couesius plumbeus.* (7-1-93)
- ~~h.~~ largescale sucker -- *Catostomus macrochagilus.* (~~7-1-93~~)(5-21-07)T
- ~~i.~~ *Leatherside chub -- Gila copei.* (7-1-93)
- ~~j.~~ *Leopard dace -- Rhinichthys falcatus.* (7-1-93)
- ~~k.~~ Longnose dace -- *Rhinichthys cataractae.* (7-1-93)
- ~~l.~~ Mountain sucker -- *Catostomus platyrhynchus.* (7-1-93)
- ~~m.~~ ~~squawfish~~ pikeminnow -- *Ptychocheilus oregonensis.* (~~7-1-93~~)(5-21-07)T
- ~~o.~~ Peamouth -- *Mylocheilus caurinus.* (7-1-93)
- ~~p.~~ Redside shiner -- *Richardsonius balteatus.* (7-1-93)
- ~~q.~~ Speckled dace -- *Rhinichthys osculus.* (7-1-93)
- ~~r.~~ Tench -- *Tinca tinca.* (7-1-93)
- ~~s.~~ Tui chub -- *Gila bicolor.* (7-1-93)
- ~~t.~~ Utah chub -- *Gila atraria.* (7-1-93)
- ~~u.~~ Utah sucker -- *Catostomus ardens.* (7-1-93)
- ~~v.~~ *Lake trout -- Salvelinus namaycush.* (4-6-05)

03. Commercial Crustacea Species. Except as permitted by the Director of the Department of Fish

and Game under Subsection 100.03, only the Crayfish - species of the genus *Pacifastacus*, may be taken for commercial purposes. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA.

Fish or crustacea may be commercially harvested ONLY with the following gear and methods: (7-1-93)

- 01. With Seine Nets.** However, all seine nets must be either: (7-1-93)
 - a.** Under constant attendance by the licensee or someone working under the supervision of the licensee; or (7-1-93)
 - b.** If being used to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. (7-1-93)
- 02. With Crayfish or Minnow Traps, Not Exceeding Three Feet in Any Dimension.** However, all crayfish and minnow traps must be lifted and emptied of catch at least once every ninety-six (96) hours except during periods of weather that pose a threat to human life, health or safety. (7-1-93)
- 03. Experimental Gear.** With experimental gear approved by the Director pursuant to Subsection 100.02. (7-1-93)
- 04. By Hand.** For crayfish ONLY, by hand. (7-1-93)
- 05. Trawl Nets.** With trawl nets as approved by the Director. (7-1-93)
- 06. Conventional Rod and Reel Fishing Tackle.** Only methods approved for sportfishing, as described in IDAPA 13.01.11, "Rules Governing Fish," are permitted, except that the holder of a commercial license may use more than two (2) lines while commercially fishing. (4-6-05)
- 07. Gill Nets.** With gill nets, as approved by the Director under such conditions as he may deem appropriate. However: (5-21-07)T
 - a.** All gill nets and lines within ten (10) feet of the surface must be clearly marked with a minimum of six (6) inch diameter buoys every fifty (50) feet. (5-21-07)T
 - b.** All gill nets must be lifted and emptied of catch at least once every eighteen (18) hours except during periods of weather that pose a threat to human life, health or safety. (5-21-07)T
 - c.** If gill net catches include excessive numbers of game fish species, licenses can be revoked, or harvest limited or suspended, as determined by the Director. (5-21-07)T

(BREAK IN CONTINUITY OF SECTIONS)

700. COMMERCIAL FISHING AREAS.

Commercial harvest is allowed only in the following areas: (7-1-93)

- 01. For Seine Nets.** Seine nets with a mesh greater than one and one half (1 1/2") square may be used ONLY in the following waters, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.: (7-1-93)
 - a.** Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)

- b.** Ashton Reservoir. (7-1-93)
 - c.** Palisades Reservoir. (7-1-93)
 - d.** Lake Lowell. (7-1-93)
 - e.** Black Canyon Reservoir. (7-1-93)
 - f.** Blackfoot Reservoir. (7-1-93)
 - g.** Mud Lake. (7-1-93)
 - h.** Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)
- 02. Minnow Traps.** Minnow traps for commercial fish may be ONLY used in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b. (7-1-93)
- a.** Snake River excluding main stem impoundments from Weiser upstream to the confluence of the North and South Forks. (7-1-93)
 - b.** Ashton Reservoir. (7-1-93)
 - c.** Palisades Reservoir. (7-1-93)
 - d.** Black Canyon Reservoir. (7-1-93)
 - e.** Blackfoot Reservoir. (7-1-93)
 - f.** Mud Lake. (7-1-93)
 - g.** Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)
- 03. Crayfish Traps.** Crayfish traps for commercial crustacea may be used ONLY in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.: (7-1-93)
- a.** Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)
 - b.** Black Canyon Reservoir. (7-1-93)
 - c.** Blackfoot Reservoir. (7-1-93)
 - d.** Mud Lake. (7-1-93)
 - e.** Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)
- 04. Rod and Reel for Lake Trout Only.** (4-6-05)
- a.** Lake Pend Orielle. (4-6-05)
- 05. Gill Nets.** Gill nets for commercial fish may only be used in waters as approved by the Director and where commercial nongame species are likely to exceed eighty (80) percent of the fish biomass. (5-21-07)T

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 22, 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 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 17, 2007.

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:

Clarify the definition of allowable bait to be consistent with the trapping rules.

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 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 2007 hunting seasons.

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 24, 2007.

DATED this 21st day of August, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut, Boise
P.O. Box 25
Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-0701

100. USE OF BAIT.

Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions. (7-9-93)

01. Time. (7-1-93)

a. No bait may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in 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, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. (4-11-06)

b. All bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of the spring and fall black bear seasons. (3-20-97)

02. Location. (7-1-93)

a. No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

b. No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

03. Types. (7-1-93)

a. ~~No parts of or whole game animals, game birds, or game fish may be used as bait. No person shall use any part of a domestic or wild origin game bird, game animal, game fish, or protected nongame wildlife for bait or scent.~~ (7-1-93)(1-22-07)T

b. The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

04. Containers. (7-1-93)

a. No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

b. No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

05. Establishment of Bait Sites. (7-1-93)

a. Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days of the close of the spring and fall black bear seasons. (3-20-97)

b. All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

**IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED
15.02.01 - FEDERAL LAWS AND REGULATIONS
DOCKET NO. 15-0201-0701 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE**

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5407(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 17, 2007.

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 chapter, promulgated in 1985 and since unchanged, is outdated, inaccurate, and unnecessary. The ICBVI seeks to repeal the entire chapter.

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 prior to the publication of the proposed rule because the existing chapter of rules is inaccurate and unnecessary and is being repealed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trina Ayres, Management Assistant, at (208) 639-8369.

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 24, 2007.

DATED this 15th day of August 2007.

Trina Ayres
Management Assistant
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, Idaho 83720-0012
(208) 639-8369 phone
(208) 334-2963 fax

IDAPA 15.02.01 IS BEING REPEALED IN ITS ENTIRETY.

**IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED
15.02.02 - VOCATIONAL REHABILITATION SERVICES
DOCKET NO. 15-0202-0701
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 67-5407(e) and 67-5408, 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 17, 2007.

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 promulgate rules governing the ICBVI's provision of vocational rehabilitation services to its clients as provided by Section 67-5408, Idaho Code, and in accordance with the Rehabilitation Act of 1973, its 1998 amendments, and related federal regulations. The ICBVI currently has established rules governing its provision of Vocational Rehabilitation Services located at IDAPA 15.02.02. The ICBVI also has its 2007 Vocational Rehabilitation Policy Manual, which includes many procedural and practice requirements relating to its provision of Vocational Rehabilitation Services to its clients. The ICBVI desires to update its rules at IDAPA 15.02.02 to include those provisions contained in its 2007 Policy Manual that should be included in its IDAPA rules governing its provision of Vocational Rehabilitation Services. ICBVI also seeks to promulgate rules to incorporate by reference all applicable federal laws and regulations governing its provision of Vocational Rehabilitation Services and provide for additional rules concerning written interpretations, public records, and office information.

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 prior to the publication of the proposed rule because the proposed rule allows the provision of benefits to the identifiable interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trina Ayres, Management Assistant, at (208) 639-8369.

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 24, 2007.

DATED this 28th day of August, 2007.

Trina Ayres, Management Assistant
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, Idaho 83720-0012
(208) 639-8369 phone / (208) 334-2963 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0202-0701

000. LEGAL AUTHORITY.

The Board of the Commission for the Blind and Visually Impaired, pursuant to authority granted in Title 67, Chapter 54 This chapter is adopted in accordance with Sections 67-5407(e) and 67-5408, Idaho Code, did adopt the following as policy for the administration of vocational rehabilitation services to the blind of Idaho. (1-5-87)()

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.

Field manuals and other agency guidance documents, as well as agency policy statements or interpretations not rising to the legal effect of a rule, if any, are available for inspection and copying at the Commission offices during regular business hours. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals shall be governed by Section 355 of these rules in accordance with 34 CFR Part 361.57. ()

004. INCORPORATION BY REFERENCE.

The following federal laws and regulations are incorporated by reference into the rules of this chapter and copies are available at the Commission's office: ()

01. 29 U.S.C. Section 701, et seq., Rehabilitation Act of 1973 as amended in 1998. ()

02. 34 CFR Parts 361 through 363. ()

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

The principal place of business of the Idaho Commission for the Blind and Visually Impaired is in Boise, Idaho. The office is located at 341 West Washington Street, 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 83720, Boise, Idaho 83720-0012. The telephone number of the office is (208)334-3220. The facsimile number of the office is (208)334-2963. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Commission records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Blind or Visually Impaired. A person whose visual acuity with correcting lenses is not better than twenty-two hundred (20/200) in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees; or a person who is functionally blind; or a person who is without any sight. ()

02. Client. An individual who has applied for, or is determined to be eligible for, vocational rehabilitation services. ()

03. Commission. The Idaho Commission for the Blind and Visually Impaired. ()

04. Comprehensive Assessment. An assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric,

psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual. An assessment also includes, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capabilities of the individual to perform adequately in a work environment. ()

05. Comparable Benefits or Services. Any benefit or service that exists under any other programs that is available to the Client. Examples are, but not limited to, Pell Grants, Medicaid, Medicare, private health insurance, and medical indigence programs for medication. ()

06. Designated State Unit. Idaho Commission for the Blind and Visually Impaired. ()

07. Functionally Blind. A person with a visual impairment which constitutes or results in a substantial impediment to employment or substantially limits one (1) or more major life activities. This is determined by the vocational rehabilitation counselor, not a physician. ()

08. Maintenance. Monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the client's participation in an assessment for determining eligibility and vocational rehabilitation needs or the client's receipt of vocational rehabilitation services under an individualized plan for employment (34 CFR Part 361.5(35)). ()

09. Vocational Rehabilitation Service or Services. Services that reduce the impact of functional limitations on the ability of a client to achieve an employment outcome. ()

011. ABBREVIATIONS.

01. ATC. Assessment and Training Center. ()

02. CFR. Code of Federal Regulations. ()

03. ICBVI. Idaho Commission for the Blind and Visually Impaired. ()

04. IPE. Individual Plan for Employment. ()

05. SSDI. Social Security Disability Insurance. ()

06. SSI. Social Security Income. ()

07. VR. Vocational Rehabilitation. ()

0012. -- 099. (RESERVED).

~~100. POPULATION TO BE SERVED.~~

~~The following defined individuals will be served by the Idaho Commission for the Blind and Visually Impaired.~~ (1-5-87)

~~**01. Legally Blind.** Individuals who have been determined legally blind as defined in Section 67-5402 of the Idaho Code.~~ (1-5-87)

~~**02. Handicap to Employment.** As a result of the disability, a substantial handicap to employment is imposed.~~ (1-5-87)

~~**03. Return To or Obtaining Employment.** Following the services of the Idaho Commission for the Blind and Visually Impaired, that person will be able to obtain or return to gainful employment.~~ (1-5-87)

~~**04. Financial Needs Determination.** The counselor and eligible individuals will complete an~~

~~individualized written rehabilitation plan. A financial needs determination will be made in each case before the services can be provided, and all available similar benefits shall be explored and utilized.~~ (1-5-87)

104. PROVISION OF SERVICES ON A STATEWIDE BASIS.

~~All Vocational rehabilitation services of the Commission for the Blind and Visually Impaired are offered on a statewide basis to individuals who are blind and visually impaired or functionally blind, subject to eligibility.~~ (1-5-87)()

101. APPLICATION.

Any blind and visually impaired or functionally blind individual may apply for vocational rehabilitation services. To apply for vocational rehabilitation services, such an individual must: ()

01. Application. Meet with a VR counselor and sign the application. An individual is considered to have applied for vocational rehabilitation services with the ICBVI when that individual has completed the application and acknowledged client rights and responsibilities. ()

02. Evidence. Assist in providing medical and psychological reports to substantiate disability and functional limitations. If the client is an SSA beneficiary, assist in providing evidence of receipt of SSA benefits. ()

03. Availability. Be available to complete assessment process. ()

04. Partner. Be an active and full partner in the vocational rehabilitation process. ()

05. Intention. Intend to achieve an employment outcome. ()

102. -- 109. (RESERVED).

110. ELIGIBILITY.

~~Eligibility shall be based upon the determination of a disability as defined in Section 100, "Population To Be Served," and such disability for the individual constitutes or results in a substantial handicap to employment; and a reasonable expectation exists that vocational rehabilitation services may benefit the individual in terms of employability.~~ (1-5-87)

01. Eligibility Requirements. ~~Eligibility requirements will be applied of a client for vocational rehabilitation services shall be based upon a determination by the Commission for the Blind and Visually Impaired without regard to sex, race, age, creed, color, physical or mental handicap, sexual orientation, or national origin of the individual applying for services. that:~~ (1-5-87)()

a. The client is blind or visually impaired; ()

b. The client's blindness or visual impairment constitutes or results in a substantial impediment to employment; ()

c. There is a reasonable expectation that vocational rehabilitation services will benefit the client in terms of securing, retaining, or regaining employment. ()

02. Residency Requirements. ~~A residence requirement, duration or other, will not be applied by the Commission for the Blind and Visually Impaired as a condition of eligibility. A client must have legal residence status, be able to complete an employment eligibility verification, and be present in the state.~~ (1-5-87)()

03. Preliminary Diagnostic Study. ~~A financial needs determination will be made in each case, and all similar benefits will be explored and utilized prior to the expenditure of funds.~~ **Presumptive Eligibility.** Individuals who are current SSI or SSDI beneficiaries are presumed to be eligible for vocational rehabilitation services unless the ICBVI can demonstrate by clear and convincing evidence that such individuals are incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of their disability. (1-5-87)()

~~04. **Financial Needs Determination.** A financial needs determination will be made in each case, and all similar benefits will be explored and utilized prior to the expenditure of funds. (1-5-87)~~

~~054. **Certificate of Ineligibility.** If an individual is determined ineligible for services, a certificate of ineligibility will be prepared and a copy provided the individual or the individual's representative. (1-5-87)(____)~~

~~06. **Annual Review.** An annual review will be done of those cases meeting the annual review requirements. (1-5-87)~~

111. RESERVING ALL ELIGIBILITY DECISIONS AND NATURE AND SCOPE OF SERVICES.
The Commission for the Blind and Visually Impaired has the sole responsibility for determining eligibility ~~that will provide services to all eligible individuals who are legally blind of clients.~~ Eligibility will be determined within a reasonable period of time, not to exceed sixty (60) days, after a client has submitted an application for services unless exceptional and unforeseen circumstances beyond the control of the Commission preclude making an eligibility determination within sixty (60) days and the Commission and the client agree to a specific extension of time or the Commission is exploring an individual's abilities, capabilities, and capacity to perform in work situations. Eligibility requirements will be applied by the Commission without regard to sex, race, age, creed, color, physical or mental disability, sexual orientation, or national origin of the individual applying for services. (1-5-87)(____)

~~112.—149. (RESERVED).~~

~~150. **ECONOMIC NEEDS TEST.**
Blind persons receiving services from the Commission for the Blind and Visually Impaired and who possess the financial resources to do so will be required to participate in the payment for assistance provided. An economic needs test shall be explored by the blind client and his/her counselor. (1-5-87)~~

~~01. **Diagnostic Services.** An economic needs test will not be applied as a condition for furnishing the following vocational rehabilitation services: Diagnostic services for the evaluation for rehabilitation potential, counseling, guidance, referral, and no cost placement. (1-5-87)~~

~~02. **Supplemental Security Income (SSI) or Public Assistance.** An economic needs test shall not be required for those individuals who are recipients of Supplemental Security Income (SSI) or public assistance. (1-5-87)~~

~~03. **Nonresident.** Any nonresident attending the Orientation and Adjustment Center will be charged tuition. This cost will be determined upon the average cost of providing services to those in the Orientation and Adjustment Center. (1-5-87)~~

~~151.—199. (RESERVED).~~

~~200. **EVALUATION OF VOCATIONAL REHABILITATION POTENTIAL.**
For every applicant for vocational rehabilitation services, the Commission for the Blind and Visually Impaired will provide the following services in the order given. If at any point in the below order of services an applicant is found ineligible, no further services will be provided. (1-5-87)~~

~~01. **Visual Condition.** An evaluation of visual condition to determine if the applicant is legally blind; (1-5-87)~~

~~02. **Handicap to Employment.** An evaluation of the handicap to employment caused by the loss of vision; (1-5-87)~~

~~03. **Employment Ability.** An evaluation of the individual's ability to benefit from vocational rehabilitation services in terms of employment; (1-5-87)~~

~~04. **Rehabilitation Services Needed.** An assessment of the scope and nature of vocational rehabilitation services necessary for an individual to reach a suitable vocational objective. (1-5-87)~~

~~2011~~. -- 209. (RESERVED).

210. INDIVIDUALIZED ~~WRITTEN REHABILITATION PLAN FOR EMPLOYMENT.~~

For those ~~individuals found~~ clients determined eligible ~~or acceptable~~ for vocational rehabilitation services, an ~~individualized written rehabilitation plan will~~ IPE shall be developed between the ~~blind individual~~ client and their VR counselor. ~~An approved IPE or IPE amendment must be signed by the client or the client's representative and appropriate Commission staff in order to be implemented. Services may be discontinued if the client fails to participate actively or does not make adequate progress toward plan completion. The individualized written rehabilitation plan will consist of~~ Prior to the IPE being written, a comprehensive assessment is required to evaluate the following components: (1-5-87)(____)

01. ~~Determination.~~ ~~The basis on which the determination of eligibility has been made. In those cases where a person has been found acceptable, an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility.~~ **Employment Outcome.** To determine the employment outcome that is selected by the client, with input from the VR counselor, that is consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (1-5-87)(____)

a. Provisions of Community Rehabilitation Program Services. The Commission will purchase vocational rehabilitation services from community rehabilitation programs that are accredited by either the Commission on Accreditation of Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System. In conjunction with the client, the VR counselor will determine which, if any, community rehabilitation program services are required for the client to achieve an employment outcome. ()

02. ~~Objectives.~~ ~~The long range and intermediate rehabilitation objectives established for the individual.~~ **Nature and Scope.** To identify the nature and scope of the vocational rehabilitation services that the client needs to become employed. (1-5-87)(____)

03. ~~Specific Vocational Rehabilitation Services.~~ ~~The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives.~~ **Planned Services.** To determine how the planned services will assist the client in overcoming the barriers to employment that were identified in the eligibility determination. (1-5-87)(____)

04. ~~Initiation and Duration Date.~~ ~~The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;~~ **Costs.** The client must apply for and secure any Comparable benefits or services, participate in paying for any or all costs of the IPE services, and make a commitment to cooperate and follow through with the IPE and achieve an employment outcome. Clients receiving services wherein costs are incurred and who possess the financial resources to do so will be required to participate in the payment for assistance provided them. (1-5-87)(____)

05. ~~Review and Evaluation.~~ ~~A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria and a record of these reviews and evaluations.~~ (1-5-87)

06. ~~Client Opinion.~~ ~~The views of the blind individual, or, as appropriate, his/her parent, guardian, or other representative, concerning his/her goals and objectives and the vocational rehabilitation services being provided.~~ (1-5-87)

07. ~~Terms and Conditions.~~ ~~The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the blind individual in implementing the individualized written rehabilitation plan, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs and the extent to which these similar benefits have been used.~~ (1-5-87)

08. ~~Client Rights.~~ ~~An assurance that the blind individual has been informed of his/her rights and the means by which he/she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of Commission for the Blind and Visually Impaired action, fair hearing, or review by the~~

Secretary of the U.S. Department of Education. (1-5-87)

~~09. **Provision of Explanation.** Where appropriate, assurance that the blind individual has been provided a detailed explanation of the availability of the resources within a client assistance project.~~ (1-5-87)

~~10. **Basis for Determination.** The basis on which the individual has been determined to be rehabilitated.~~ (1-5-87)

~~11. **Post-Employment Services.** Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.~~ (1-5-87)

~~211.—249. (RESERVED).~~

250. VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS:

~~01. **Counseling and Guidance.** All clients and other interested parties will be provided information on blindness and vocational adjustment of blind individuals.~~ (1-5-87)

~~a. For clients, the counselor of the Commission for the Blind and Visually Impaired will provide at the initial contact a full explanation of eligibility requirements and related procedures and services available through the Commission for the Blind and Visually Impaired for eligible clients. The counselor, at this time, will initiate a counseling relationship that will last throughout the course of the individual's contact with the Commission for the Blind and Visually Impaired, designated to accomplish the client's successful adjustment to his/her situation.~~ (1-5-87)

~~b. At appropriate times during the vocational rehabilitation process, referral will be made to other agencies that might provide useful services.~~ (1-5-87)

~~c. Counseling and guidance will be offered to family members and other individuals regarding blindness when it is determined that such assistance will be beneficial to the client.~~ (1-5-87)

~~02. **Physical and Mental Restoration.** After making a determination that the condition is stable or slowly progressive, the Commission for the Blind and Visually Impaired will provide physical and/or mental restoration services that will enhance the client's rehabilitation potential. Of primary concern is the effect the service will have on the individual reaching a suitable vocational objective.~~ (1-5-87)

~~a. Although determined medically advisable, the Commission for the Blind and Visually Impaired must view these services from a vocational point and it is, therefore, recognized that not all services stated to be medically desirable would be provided. Services provided include (but are not limited to) eye surgery, hearing aids, corrective surgery, prosthetic devices, and/or psychological or psychiatric services.~~ (1-5-87)

~~b. In dealing with individuals who have multiple physical disabilities, the Commission for the Blind and Visually Impaired will carefully evaluate the vocational handicap caused by the physical disability other than blindness or mental disability and, if appropriate, make referral to other agencies.~~ (1-5-87)

~~c. In cases where there exists a reasonable likelihood that the services of the Commission for the Blind and Visually Impaired will benefit the person in terms of employability, those recommendations will be reviewed by the agency medical consultant.~~ (1-5-87)

~~03. **Vocational Training.** The Commission for the Blind and Visually Impaired will provide or facilitate the provision of such vocational training as is necessary for the client to reach the jointly agreed upon vocational goal stated in the client's individualized written rehabilitation plan within the following guidelines:~~ (1-5-87)

~~a. No training in universities, colleges, vocational schools or technical schools will be paid for with rehabilitation funds unless maximum efforts have been made to secure grant assistance in whole or in part from all other known sources.~~ (1-5-87)

~~b. Training in institutions of higher learning will be provided to the level that ordinary entry into the selected vocational field is made. (1-5-87)~~

~~e. Training in universities, colleges, vocational schools or technical institutes will take place within the state of Idaho unless it can be shown that training that would allow the client equal employment opportunities is not available within the State. Except for specialized training programs for the blind, in no case will the cost of attending an out-of-state facility exceed the highest cost of attending an in-state public facility. (1-5-87)~~

~~04. **Orientation and Adjustment Center Training.** The Commission for the Blind and Visually Impaired will operate and maintain an Orientation and Adjustment Center for the blind of the State and for those persons for whom, through joint planning, it is determined that the Orientation and Adjustment Center is the most suitable resource for prevocational or vocational training. The primary focus of this center will be to develop proper attitudes about blindness in the student. Hand in hand with this emphasis will be training in such skill areas as the long cane method of travel, Braille, typing, home economics, industrial arts, sewing and abacus. Essential to the student's development will be an understanding of the social and vocational attitudes about blindness and an awareness of how to cope with problems which will arise by reason of the negative social and vocational attitudes about blind individuals. (1-5-87)~~

~~05. **Home Instruction.** Alternative training in the areas described above is also available through the home teaching program of the Commission for the Blind and Visually Impaired or those persons who do not attend the Orientation and Adjustment Center. (1-5-87)~~

~~06. **Training Tools and Materials.** The Commission for the Blind and Visually Impaired will provide to the client books, tools and other training materials as agreed to through joint planning by the counselor and client. The amount of materials supplied will be dependent upon the course of study, and it is expected that different amounts would be provided to individual clients. Major pieces of equipment, such as closed circuit television magnifying systems, sensory conversion systems such as Versa Braille, computers with voice output, etc., will not be assigned to an individual nor a training program, but rather will be assigned to the training facility and utilized by the maximum number of clients of the Commission for the Blind and Visually Impaired attending that facility. (1-5-87)~~

~~07. **Maintenance.** Maintenance is a supportive service of the Commission for the Blind and Visually Impaired provided to allow clients to derive the full benefit of other vocational rehabilitation services. It can be provided at any time during the rehabilitation process in conjunction with other vocational rehabilitation services. The provision of maintenance will be part of the services outlined in the individualized written rehabilitation plan. If not, a memo outlining the provision of maintenance and related services will be prepared for the case file. As a supportive service, maintenance cannot be provided unless other services, excluding counseling and guidance, are being provided concurrently. The amount of maintenance will be determined by the circumstances of each client and will be governed by the following: (1-5-87)~~

~~a. Maintenance payments may be used to cover the cost of food, shelter, clothing and other subsistence expenses. (1-5-87)~~

~~b. Maintenance should not exceed the amount of increased expense to a client caused by engaging in a rehabilitation program. (1-5-87)~~

~~c. When maintenance exceeds the cost of subsistence expenses determined by other public programs (i.e., Health and Welfare and SSI), a full explanation will appear on the individualized written rehabilitation plan or in the case dictation. (1-5-87)~~

~~d. When providing maintenance for a client to meet subsistence expenses while in a travel status, the amount will not exceed the amount provided to State employees. (1-5-87)~~

~~e. Maintenance will be provided only following a financial needs determination and after a thorough search for similar benefits has been made. (1-5-87)~~

~~08. **Transportation.** The Commission for the Blind and Visually Impaired will pay for transportation, including per diem, while in travel status that is necessary for a client to receive diagnostic or other rehabilitation services except maintenance. The Commission for the Blind and Visually Impaired will pay for, when deemed necessary by the client and counselor, the transportation expenses of one attendant to travel with a client. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective. (1-5-87)~~

~~09. **Services to Family Members.** The Commission for the Blind and Visually Impaired will provide services to the family members of a client after a determination has been made that such services are necessary to the vocational rehabilitation of the client. These services may be, but are not limited to the following: transportation, care of infants and children, counseling, etc. (1-5-87)~~

~~10. **Interpreter Services for the Deaf.** The Commission for the Blind and Visually Impaired will provide interpreter service, including tactile interpreting for deaf-blind individuals, to all individuals in need of such services in order to take full advantage of diagnostic or rehabilitation services. Where appropriate, the assistance of staff of other agencies and/or facilities will be secured to assist in the rehabilitation of deaf-blind individuals. (1-5-87)~~

~~11. **Reader Services.** Funds will be made available for reader services to any client who is enrolled in a training program directed toward achieving his/her vocational goal in which reading is required. The client and the counselor will plan jointly as to the amount of funds required to meet the client's individual reading needs for a specified period. The agreement reached will be incorporated into the client's individualized written rehabilitation plan and the client will be given written authorization specifying the amount which has been authorized and the time period encompassed in the authorization. The client will arrange for his/her readers to bill the Commission for the Blind and Visually Impaired monthly for the reader service which has actually been provided. The client is responsible for reviewing bills submitted for completeness and accuracy. (1-5-87)~~

~~12. **Rehabilitation Teaching Services.** Rehabilitation teaching services will be available from three (3) sources: (1-5-87)~~

~~a. From the Orientation and Adjustment Center (provided that it has been determined in joint planning that the Orientation and Adjustment Center is the best vehicle for prevocational or vocational training); (1-5-87)~~

~~b. Through the Commission for the Blind and Visually Impaired's home teacher service for those persons who do not attend the Orientation and Adjustment Center; and (1-5-87)~~

~~c. Directly from rehabilitation counselors when the other sources are temporarily unavailable. (1-5-87)~~

~~13. **Orientation and Mobility Services.** The objective of orientation and mobility services is to develop skills, techniques, and attitudes which enable the individual to truly function independently. Such services include, but are not limited to, training in the use of the long, white cane; development of effectiveness in nonvisual communication skills including Braille, typing, etc.; training in other appropriate skills needed by the individual to fulfill his/her responsibilities in his/her home community; stimulating affirmative attitudes toward the role of blind persons in our society and their competency to function competitively; and development of readiness to accept or even insist upon equal responsibilities and privileges of citizenship. (1-5-87)~~

~~14. **Telecommunications, Sensory and Other Technological Aids and Devices.** The Commission for the Blind and Visually Impaired will provide telecommunications, sensory and other technological aids and devices when it has been determined through joint planning that such an aid or device is required to significantly enhance employment opportunities in the area of the vocational goal stated on the client's individualized written rehabilitation plan or significantly improve an employed client's performance so that he/she would not be underemployed. All devices and aids provided under this policy, where appropriate, will be supplied to clients only by persons licensed to do so by the State or, in the cases of newly developed aids and devices, after they meet any applicable engineering or safety standards. (1-5-87)~~

~~15. **Recruitment and Training Services to Provide New Employment Opportunities in the Fields of Appropriate Public Service Employment.** The Commission for the Blind and Visually Impaired will assist the client to find employment in the areas which are most interesting and appealing to him/her. The counselor will, however, use his/her expertise to point out job opportunities which are available in the areas of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment; and the Commission for the Blind and Visually Impaired will assist in the developing opportunities for practicum or other training, either paid or unpaid, in these public service areas.~~ (1-5-87)

~~16. **Placement in Suitable Employment.** The Commission for the Blind and Visually Impaired will assist the client who has completed the necessary preparations in locating and securing regular competitive employment.~~ (7-1-93)

~~a. In all cases, competitive employment will be considered first.~~ (1-5-87)

~~b. Consideration of sheltered employment will be made only after it is determined that competitive employment cannot be achieved within reasonable bounds.~~ (1-5-87)

~~c. In determining suitability of employment, factors to be considered include (but are not limited to) the client's interests, training and qualifications, background, job availability, starting wage or salary, opportunity for advancement, and the client's willingness to relocate.~~ (1-5-87)

~~17. **Post Employment Services.** The Commission for the Blind and Visually Impaired will provide post employment services when it has been determined such services are necessary to maintain employment, or in the case of an individual who accepted initial employment below their capabilities, to achieve more suitable employment which must be more apt to maintain the individual in employment and which must be closely related to the existing job.~~ (1-5-87)

~~a. If new and distinct handicapping problems have arisen or extensive rehabilitation services are required, a new individualized written rehabilitation plan will be completed.~~ (1-5-87)

~~b. Services which are primarily supportive of other rehabilitation services, specifically maintenance and transportation, cannot be provided by themselves as post employment services.~~ (1-5-87)

~~18. **Occupational Licenses, Tools, Equipment, Initial Stocks (Including Livestock), and Supplies Necessary to Enter an Occupation or Small Business.** Occupational licenses, tools, equipment, initial stocks (including livestock), and/or supplies necessary to enter an occupation or small business will be provided by the Commission for the Blind and Visually Impaired or the Commission for the Blind and Visually Impaired will assist in the application for assistance from other agencies and/or facilities for any or all of these services, to a client who has a vocational objective stated in a jointly developed and approved individualized written rehabilitation plan that calls for them.~~ (1-5-87)

~~a. Expenditures for these services, in some cases, may be substantial and the Commission for the Blind and Visually Impaired will assist a client in obtaining financial assistance in these cases from other sources with the Commission for the Blind and Visually Impaired using rehabilitations funds mainly to deal directly with the handicap to employment caused by blindness.~~ (1-5-87)

~~b. In no instance will the Commission for the Blind and Visually Impaired use rehabilitation funds to purchase land, an existing or for the erection of a building, or for the purchase of intangible resources of an existing business.~~ (1-5-87)

~~19. **Other Goods and Services.** Other goods and services which can be reasonably expected to be of benefit in terms of employability and are not contradicted by the Rehabilitation Act as amended, the Regulations or the State Plan, may be provided, if necessary, to reach the vocational goal stated on a jointly developed and approved individualized written rehabilitation plan.~~ (1-5-87)

2511. -- 299. (RESERVED).

300. ~~RATES OF PAYMENT POLICY.~~

~~The Commission for the Blind and Visually Impaired will make reasonable efforts to purchase supplies for clients' rehabilitation needs which are the most reasonable and satisfactory quality at the lowest available cost or the usual and customary charge for such services except when such practice significantly delays or interferes with the provision of vocational rehabilitation services to the client. (1-5-87)~~

~~**01. Establishment of Rates.** In establishing rates of payment the Commission for the Blind and Visually Impaired will analyze the costs of other state and public agencies for the same or similar services and will consult with organizations or businesses providing such services. (1-5-87)~~

~~**021. Upper Limits.** The Commission for the Blind and Visually Impaired reserves the right to In order to ensure a reasonable cost to ICBVI's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, ICBVI hereby establishes upper limits on any goods and dollar amounts it will contribute to clients for certain categories of services: provided as part of an implemented IPE pursuant to Section 210 of these rules: (1-5-87)()~~

~~**a.** Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho public and private in-state colleges, vocational technical schools, universities, and other education and training institutions and including enrollment in summer school; Three thousand three hundred dollars (\$3,300) per federal fiscal year. If the client receives a Pell Grant, it shall be applied first for tuition or fees before any expenditure of funds by ICBVI. ()~~

~~**b.** Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school; Three thousand three hundred dollars (\$3,300) per federal fiscal year. If the client receives a Pell Grant, it shall be applied first for tuition or fees before any expenditure of funds by ICBVI. ()~~

~~**i.** If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, ICBVI, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. ()~~

~~**ii.** If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for ICBVI to have the client attend the out-of-state educational institution, ICBVI, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. ()~~

~~**iii.** If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, ICBVI will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the ICBVI regional office assisting the client. ()~~

~~**c.** Books and supplies. Six hundred dollars (\$600) per federal fiscal year. This limit includes expenditures for books and supplies required for attendance of summer school. ()~~

~~**d.** Medical exams including written report. ()~~

~~**i.** Specialist exam by M.D: Two hundred dollars (\$200) plus actual cost of related procedures such as x-rays. ()~~

~~**ii.** Psychological exam by licensed psychologist: Two hundred dollars (\$200) plus actual cost of psychometric tests. ()~~

~~**iii.** Ophthalmologist/Optomtrist exam: Two hundred dollars (\$200) plus actual cost of visual field exam or other necessary tests. ()~~

~~(1) Low vision exam: One hundred twenty-five dollars (\$125). ()~~

- (2) Follow-up low vision consultation: Fifty-five dollars (\$55). ()
- (3) Eye report: Twenty-five dollars (\$25). ()
- iv. Eye glasses or contact lenses: Eighty dollars (\$80) for frames and the usual and customary cost for lenses and contact lenses. Seven hundred dollars (\$700) for bioptics. ()
- v. Audiologist exam: Eighty-five dollars (\$85). ()
- vi. Physical exam (general basic medical): Sixty-five dollars (\$65). ()
- e. Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at eighty dollars (\$80) per hour. ()
- f. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. ()
- g. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. ()
- h. Transportation. ()
- i. Public conveyance (bus, van, airfare): Actual cost. ()
- ii. Transportation costs associated with personal vehicle usage with or without personal driver: One hundred dollars (\$100) per month within a twenty (20) mile radius in-town commuting and two hundred dollars (\$200) per month for out-of-town commuting. ICBVI does not provide funds for a client's purchase of a motor vehicle. ()
- iii. Cab subsidy programs (Scrip) must be used by clients where available. ()
- i. Maintenance: One thousand five hundred dollars (\$1,500) per federal fiscal year and no more than three hundred dollars (\$300) per month. There is no limit on the number of months a client can receive Maintenance up to the one thousand five hundred dollar (\$1,500) limit per federal fiscal year. ()
- i. ICBVI will not pay Maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. ()
- ii. Maintenance for client attendance at Assessment and Training Center (ATC): Three hundred dollars (\$300) per ATC term for basic living expenses incurred during the ATC term which are directly related to client's ATC attendance and participation. ()
- j. Copy fees: Fifteen dollars (\$15) for obtaining a copy of any report or other record from an outside agency or entity required by ICBVI in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. ()
- k. Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing ICBVI inventory will count towards the one thousand dollar (\$1,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to ICBVI. ICBVI will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to ICBVI. ()
- l. On-the-Job training fees: Three thousand dollars (\$3,000). ()
- m. Computers including hardware and software: One thousand dollars (\$1,000) per case. If ICBVI

determines that a change in computers is necessary, the client shall return the original computer to ICBVI. ICBVI will not provide or purchase a new or different computer for the client until the original computer has been returned. ()

n. Self-employment plans: Three thousand dollars (\$3,000). ()

o. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of ICBVI funds towards IPE related child care. ()

02. **Exclusion of Surgery and Organ Transplantation.** ()

a. ICBVI does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. ()

b. ICBVI does not provide funds for a client's organ transplantation. ()

03. **Authorization to Purchase.** When purchasing services from a vendor, the ICBVI requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the ICBVI reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the rehabilitation services chief or the ICBVI administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. ()

04. **Exception Policy.** Any and all exceptions to the upper limits established by section 300.01 of these rules will be reviewed on an individual case basis, and require approval by the rehabilitation services chief of the ICBVI. ()

~~301.—309. (RESERVED).~~

~~310. **AVAILABILITY OF PERSONNEL TRAINED IN CLIENT NATIVE LANGUAGE OR MODE OF COMMUNICATION.**~~

~~In cases where it is necessary to provide for interpretation of any mode of communication, the Commission for the Blind and Visually Impaired will seek such services at no cost when available or at cost when necessary. (1-5-87)~~

~~311.—314. (RESERVED).~~

~~315. **BUSINESS ENTERPRISE PROGRAM AND USE OF SECTION 110 DOLLARS IN RANDOLPH-SHEPPARD PROGRAM.**~~

~~All clients of the Commission for the Blind and Visually Impaired eligible for the Randolph Sheppard Program will be referred to the vocational rehabilitation program for consideration of vocational rehabilitation services. (1-5-87)~~

~~316.—319. (RESERVED).~~

~~320. **PROVISION OF SERVICES TO CERTAIN DISABLED CIVIL SERVICE EMPLOYEES.**~~

~~The State Plan will assure that vocational rehabilitation services are available to civil employees of the U.S. government who are disabled in the line of duty under the same terms and conditions applied to other individuals. (1-5-87)~~

~~321.—324. (RESERVED).~~

~~325. **APPROPRIATE COMMUNICATION MEDIA.**~~

~~The Commission for the Blind and Visually Impaired will provide recorded material for the blind and those individuals with disabilities which make it impossible for them to use printed materials. Certification of the disabling condition will be a part of the application for these services. (1-5-87)~~

~~326.—329. (RESERVED).~~

~~330. REVIEW OF CASES RECEIVING EXTENDED EVALUATION SERVICES, AND REEVALUATION OF CLIENTS CLOSED STATUS 26 IN SHELTERED WORKSHOPS.~~

~~Cases receiving extended evaluation services will be periodically reviewed to determine if the individual is capable of competitive employment. Cases closed Status 26 in sheltered workshops will be reevaluated on an annual basis.~~
(1-5-87)

~~331. -- 334. (RESERVED).~~

~~335. ADMINISTRATIVE REVIEW -- CLIENT SERVICES EVALUATION.~~

~~Each office of the Commission for the Blind and Visually Impaired will undergo an administrative review yearly.~~
(1-5-87)

~~336. -- 339. (RESERVED).~~

~~340. INFORMATION AND REFERRAL SYSTEMS.~~

~~The Commission for the Blind and Visually Impaired will develop cooperative agreements with other service providers whereby information regarding the disabled population each agency serves is shared within the limitations of federal rules and regulations, and where appropriate, referrals to other agencies will be made to the benefit of the disabled individual being served.~~
(1-5-87)

~~341. -- 344. (RESERVED).~~

~~345. NONDISCRIMINATION.~~

~~The Commission for the Blind and Visually Impaired will not discriminate against any individual with regard to sex, race, age, creed, color, physical or mental handicap, sexual orientation, or national origin.~~
(1-5-87)

~~34601. -- 349. (RESERVED).~~

350. CONFIDENTIALITY.

All Ppersonal information the Commission for the Blind and Visually Impaired has regarding any individual who is or may become legally blind, and who is or may become legally blind, and who is or may be a referral, or former client, is and will be treated as concerning clients is confidential information. The information is used only for purposes directly connected to the administration of the ICBVI program, and may not be released without the informed, written consent of the client except as otherwise provided by law.
(1-5-87)()

~~351. -- 354. (RESERVED).~~

~~355. ADMINISTRATIVE REVIEW CLIENT APPEALS.~~

~~All applicants will be informed of their right to request a hearing or review as outlined in the Code of Federal Regulations, 34 CFR 361.48. If the client feels there is no resolution, they may request a review from the Secretary of the U.S. Department of Education.~~
(1-5-87)

01. Informal Dispute Resolution. Within fifteen (15) calendar days of notification of the contested action, lack of action or decision, the client may request that an informal dispute resolution be held. The request shall be made in writing to the rehabilitation services chief. The written request should state the reason for the review.
()

a. The rehabilitation services chief shall inform the client in writing as to the time, place, and date of the informal dispute resolution. The client may choose to represent himself or may have a representative(s) speak on his behalf.
()

b. The rehabilitation services chief will make a decision regarding the specifics of the informal dispute resolution. This decision will be in written form and it will be sent to the client, with a copy in the case file.
()

02. Mediation. The request shall be made in writing to the rehabilitation services chief. A written

request shall state the reason for the review. The mediation must take place within sixty (60) days of client's request.
()

03. Impartial Due Process Hearing. An impartial due process hearing can be held without an informal dispute resolution or mediation or if the client is dissatisfied with the result of the informal dispute resolution or mediation. The impartial due process hearing will deal with the issues involved in the original Informal dispute resolution or mediation, if one took place. The request for an Impartial due process hearing shall be made in writing to the administrator of the Commission within fifteen (15) calendar days of the rehabilitation services chief's decision from the informal dispute resolution or the mediation proceedings. The hearing by an impartial hearing officer must be held within sixty (60) days of a request by the client unless both parties agree to a specified delay.
()

~~356.—359. (RESERVED).~~

360. CLIENT ASSISTANCE PROJECT.

~~The Commission for the Blind and Visually Impaired will work cooperatively with coordinators of the Client Assistance Project.~~
(1-5-87)

~~361.—364. (RESERVED).~~

365. UTILIZATION OF REHABILITATION FACILITIES.

~~The Commission for the Blind and Visually Impaired will utilize rehabilitation facilities at such times when this is an appropriate plan which will benefit the client.~~
(1-5-87)

~~366.—369. (RESERVED).~~

370. PROVISION OF SERVICES TO GROUPS.

~~Services to groups may be provided to organizations serving the blind of Idaho only with the approval of the Board of the Commission for the Blind and Visually Impaired, and only in the event funds are available to provide such services.~~
(1-5-87)

~~371.—374. (RESERVED).~~

375. BARRIER FREE FACILITIES USED BY SERVICE PROVIDERS.

~~The Commission for the Blind and Visually Impaired shall work with all facilities and service providers to ensure equal access.~~
(1-5-87)

~~376.—379. (RESERVED).~~

380. DEVELOPMENT OF SUBGRANTS AND CONTRACTS.

~~The Commission for the Blind and Visually Impaired will follow standards of the Division of Purchasing for requests for proposals in the development of subgrants and contracts.~~
(1-5-87)

~~381.—384. (RESERVED).~~

385. RESPONDING TO FEDERAL REPORTS.

~~The Commission for the Blind and Visually Impaired will comply with federal requirements regarding federal statistical and financial reporting organizations.~~
(1-5-87)

~~386.—389. (RESERVED).~~

390. RETENTION OF RECORDS.

~~Client files, and financial and statistical records of the Commission for the Blind and Visually Impaired will be kept for three (3) fiscal years once they become inactive.~~
(1-5-87)

~~391.—394. (RESERVED).~~

395. ~~PUBLIC INPUT TO THE POLICY DEVELOPMENT OF THE COMMISSION.~~

The Commission for the Blind and Visually Impaired will illicit public input for development of agency policy, rules and regulations. (1-5-87)

3956. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED
15.02.03 - RULES GOVERNING THE INDEPENDENT LIVING PROGRAM
DOCKET NO. 15-0203-0701 (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. The action is authorized pursuant to Sections 67-5407(e) and 67-5408, 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 17, 2007.

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 changes are needed to promulgate a new chapter of rules governing the ICBVI's provision of rehabilitation services relating to its federally-mandated Independent Living Program, as provided by Section 67-5408, Idaho Code, and in accordance with applicable sections of the Rehabilitation Act of 1973, its 1998 amendments, and applicable federal regulations. The ICBVI's 2007 Independent Living Manual includes procedural and practice requirements governing provision of its Independent Living Program to its clients. The ICBVI desires to promulgate a new chapter of administrative rules in the Idaho Administrative Code at IDAPA 15.02.03 setting forth those procedural and practice provisions contained in its 2007 Independent Living Manual that should be IDAPA rules governing its provision of its Independent Living Program. ICBVI also seeks to incorporate by reference into this new chapter applicable federal laws and regulations governing its Independent Living Program.

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 prior to the publication of the proposed rule because the proposed rule allows the provision of benefits to the identifiable interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trina Ayres, Management Assistant, at (208) 639-8369.

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 24, 2007.

DATED this 28th day of August, 2007.

Trina Ayres
Management Assistant
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, Idaho 83720-0012
(208) 639-8369 phone
(208) 334-2963 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0203-0701

IDAPA 15
TITLE 02
CHAPTER 03

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

15.02.03 – RULES GOVERNING THE INDEPENDENT LIVING PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Sections 67-5407(e) and 67-5408, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 15.02.03, “Rules Governing the Independent Living Program.” ()

02. Scope. These rules include, but are not limited to, the procedure and practice requirements governing the provision of services under the Independent Living Program. ()

002. WRITTEN INTERPRETATIONS.

The Commission 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 the offices of the Idaho Commission for the Blind and Visually Impaired. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals shall be governed by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

The following federal laws and regulations are incorporated by reference into the rules of this chapter: ()

01. 29 U.S.C. Section 701, et. seq., Rehabilitation Act of 1973, as amended in 1998. ()

02. 34 CFR 364. ()

005. OFFICE LOCATION - OFFICE HOURS - MAILING ADDRESS - TELEPHONE NUMBER - FACSIMILE NUMBER.

01. Location. The principal place of business of the Idaho Commission for the Blind and Visually Impaired is located at 341 West Washington Street, Boise, Idaho. ()

02. Office Hours. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ()

03. Mailing Address. The mailing address of the office is P. O. Box 83720, Boise, Idaho 83720-0012. ()

04. Telephone. The telephone number of the office is (208) 334-3220. ()

05. Facsimile. The facsimile number of the office is (208) 334-2963. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Commission records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Blind or Visually Impaired. A person whose visual acuity with correcting lenses is not better than 20/200 in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees; or a person who is functionally blind; or a person who is without any sight. ()

02. Client. An individual who has applied for, or is determined to be eligible for Independent Living Services. ()

03. Commission. The Idaho Commission for the Blind and Visually Impaired. ()

04. Comparable Benefits and Services. Any benefit or service that exists under any other programs that is available to the client. Examples are, but not limited to, Medicaid, Medicare, private health insurance, and medical indigence programs for medication. ()

05. Functionally Blind. A person with a visual impairment which constitutes or results in a substantial impediment to employment or substantially limits one (1) or more major life activities. ()

06. Impairment. Any physical, mental, or emotional disability that causes limitations in a functional area such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills. ()

07. Independent Living Services. Services that reduce the impact of functional limitations on the ability of a client to achieve independence in the family or community. ()

011. ABBREVIATIONS.

01. CFR. Code of Federal Regulations. ()

02. ICBVI. Idaho Commission for the Blind and Visually Impaired. ()

012. – 099. (RESERVED).

100. PROVISION OF SERVICES ON A STATEWIDE BASIS AND APPLICATION.

01. Services. Independent Living Services are offered on a statewide basis to individuals who are blind or visually impaired, subject to eligibility requirements as set forth in Section 110 of these rules. ()

02. Eligibility Requirements. Eligibility requirements will be applied by the Commission without regard to sex, race, creed, color, physical or mental disability, sexual orientation, or national origin of the individual applying for Services. ()

03. Application. To apply for Independent Living Services, an individual must meet with an ICBVI rehabilitation teacher and complete an application for Independent Living Services. An individual is considered to have applied for Independent Living Services with the ICBVI when that individual has signed an application for Independent Living Services, including completion and signature of required forms relating to independent living rights and responsibilities and to the release and exchange of information. ()

101 -- 109. (RESERVED).

110. ELIGIBILITY.

Eligibility of a client for Independent Living Services shall be based upon a determination by the Commission that:

()

01. Blind or Visually Impaired. The client is blind or visually impaired;

()

02. Ability to Function. The client's blindness or visual impairment substantially limits the Client's ability to function in the family or community;

()

03. Result of Services. Provision of Independent Living Services will improve the Client's ability to function, continue functioning, or move toward functioning independently in the family or community; and

()

04. Residency. The client is a resident of the state of Idaho.

()

111 -- 149. (RESERVED).

150. INDEPENDENT LIVING PLAN

01. Plan Development. For those clients determined eligible for Independent Living Services, an Independent Living Plan shall be jointly developed by the client and the assigned ICBVI rehabilitation teacher, unless the need for an Independent Living Plan is waived by the client in writing.

()

02. Plan Contents. If the client chooses to have an Independent Living Plan, it shall include the independent living goals and objectives, Independent Living Services to be provided, including start and end dates, costs, Comparable Benefits and Services involved, client financial participation and any other elements deemed necessary by the ICBVI rehabilitation teacher.

()

151 -- 199. (RESERVED).

200. CLIENT FINANCIAL PARTICIPATION.

There is no fee assessed for Independent Living Services provided directly to the client by the ICBVI rehabilitation teacher. However, where the provision of Independent Living Services includes the purchase of aids, appliances, assistive technology, computer hardware and software, and other purchased services or devices, the client's ability to pay shall be taken into consideration with the expectation that the client will contribute toward or pay for the required service. ICBVI shall expend no more than five hundred dollars (\$500) per eligible client towards the purchase of aids, appliances, assistive technology, computer hardware and software, and other devices and services. Any exceptions to this rule shall only be granted upon review and approval of the ICBVI independent living coordinator.

()

201 -- 249. (RESERVED).

250. CONFIDENTIALITY.

All personal information concerning clients is confidential. The information is used only for purposes directly connected to the administration of the ICBVI Independent Living Program and may not be released without the informed, written consent of the client, except as otherwise provided by law.

()

251. -- 999. (RESERVED).

**IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**15.02.04 - RULES GOVERNING THE PREVENTION OF BLINDNESS
AND SIGHT RESTORATION PROGRAM**

DOCKET NO. 15-0204-0701 (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. The action is authorized pursuant to Section 67-5407 (d) and (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 17, 2007.

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

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

The proposed rule changes are needed to promulgate a new chapter of rules governing the ICBVI's program for the Prevention of Blindness and Sight Restoration, as mandated by Section 67-5407(d), Idaho Code. The ICBVI's 2007 State Only Prevention of Blindness and Sight Restoration Program Manual includes procedural and practice requirements governing provision of its Prevention of Blindness and Sight Restoration Program ("Program") to its clients. The ICBVI desires to promulgate a new chapter of administrative rules in the Idaho Administrative Code at IDAPA 15.02.04 setting forth those procedural and practice provisions contained in its 2007 State Only Prevention of Blindness and Sight Restoration Program Manual that should be IDAPA rules governing its provision of the Program.

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 prior to the publication of the proposed rule because the proposed rule allows the provision of benefits to the identifiable interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trina Ayres, Management Assistant, at (208) 639-8369.

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 24, 2007.

DATED this 28th day of August, 2007.

Trina Ayres
Management Assistant
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, Idaho 83720-0012
(208) 639-8369 phone
(208) 334-2963 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0204-0701

**IDAPA 15
TITLE 02
CHAPTER 04**

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

**15.02.04 – RULES GOVERNING THE PREVENTION OF BLINDNESS
AND SIGHT RESTORATION PROGRAM**

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 67-5407(d) and (e), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 15.02.04, “Rules Governing the Prevention of Blindness and Sight Restoration Program.” ()

02. Scope. These rules include, but are not limited to, the procedure and practice requirements governing the provision of services under the Prevention of Blindness and Sight Restoration Program. ()

002. WRITTEN INTERPRETATIONS.

The Commission 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 the offices of the Idaho Commission for the Blind and Visually Impaired. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals shall be governed by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into the rules of this chapter. ()

005. OFFICE LOCATION -- OFFICE HOURS -- MAILING ADDRESS -- TELEPHONE NUMBER -- FACSIMILE NUMBER.

01. Location. The principal place of business of the Idaho Commission for the Blind and Visually Impaired is located at 341 West Washington Street, Boise, Idaho. ()

02. Office Hours. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ()

03. Mailing Address. The mailing address of the office is P. O. Box 83720, Boise, Idaho 83720-0012. ()

04. Telephone. The telephone number of the office is (208) 334-3220. ()

05. Facsimile. The facsimile number of the office is (208) 334-2963. ()

007. PUBLIC RECORDS ACT COMPLIANCE.

Commission records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code.

()

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. Blind or Visually Impaired. A person whose visual acuity with correcting lenses is not better than 20/200 in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees; or a person who is functionally blind; or a person who is without any sight.

()

02. Client. An individual who has applied for, or is determined to be eligible for, Prevention of Blindness or Sight Restoration Services.

()

03. Commission. The Idaho Commission for the Blind and Visually Impaired.

()

04. Comparable Benefits or Services. Any benefit or service that exists under any other programs that is available to the client. Examples are, but not limited to, Medicaid, Medicare, private health insurance, and medical indigence programs for medication.

()

05. Functionally Blind. A person with a visual impairment which constitutes or results in a substantial impediment to employment or substantially limits one (1) or more major life activities.

()

06. Immediate Danger of Blindness. The status of an individual or client who is in danger of becoming blind or visually impaired within two (2) years.

()

07. Prevention of Blindness and Sight Restoration Services or Services. Diagnosis, treatment, or surgery to prevent blindness or restore vision to clients without financial resources to procure such Services for themselves.

()

011. -- 099. (RESERVED).

100. PROVISION OF SERVICES ON A STATEWIDE BASIS.

Prevention of Blindness and Sight Restoration Services are offered on a statewide basis to individuals who are blind and visually impaired or who are in immediate danger of blindness, subject to eligibility and available funding. To apply, individuals must meet with a vocational rehabilitation assistant at the Commission to complete and sign an application.

()

101. -- 109. (RESERVED).

110. ELIGIBILITY.

Eligibility of a client for Prevention of Blindness and Sight Restoration Services shall be based upon a determination by the Commission that a client is blind or visually impaired, functionally blind, or in immediate danger of blindness and that the client is without financial resources to procure Services for himself. Clients must also meet residency requirements as set forth in Subsection 110.02 of these rules.

()

01. Demonstration of Financial Need. Only clients without financial resources to procure Services for themselves are eligible for Prevention of Blindness and Sight Restoration Services. Clients shall undergo a financial needs assessment with Commission staff to determine whether financial eligibility requirements are met.

()

02. Residency Requirements. In order to be eligible for Prevention of Blindness and Sight Restoration Services, a client must demonstrate the following residency requirements:

()

a. If client is not a United States citizen, client shall provide proof of his legal presence as a registered

alien in the United States. ()

b. Residence in the state of Idaho for a minimum of six (6) months; and ()

c. Presence in the state of Idaho at the time of provision of Prevention of Blindness and Sight Restoration Services. ()

112 -- 199. (RESERVED).

200. PAYMENT FOR NECESSARY EXPENSES.

The Commission's payment of necessary expenses associated with provision of Prevention of Blindness and Sight Restoration Services to eligible clients is subject to availability of funds during any single state fiscal year. In the event available funds for Prevention of Blindness and Sight Restoration Services are exhausted prior to the end of any single state fiscal year, eligible clients are placed on a waiting list until such time as funding is available to resume Prevention of Blindness and Sight Restoration Services. ()

01. Upper Limits. Subject to Subsection 200.03 of these rules, the Commission shall pay no more than five thousand dollars (\$5,000) per eligible client for necessary expenses incurred for Prevention of Blindness and Sight Restoration Services during each eligible client's lifetime participation in the Blind Prevention and Sight Restoration Program. ()

02. Comparable Benefits and Services. Eligible clients shall apply for and secure any comparable benefits and services which shall be applied towards payment of necessary expenses incurred for Prevention of Blindness and Sight Restoration Services before any expenditure of Commission funds. ()

03. Exceptions. Any exceptions to the individual lifetime limit per eligible client set forth in Subsection 200.01 of these rules shall only be granted upon approval of the ICBVI rehabilitation services chief. ()

201. -- 249. (RESERVED).

250. CONFIDENTIALITY.

All personal information concerning clients is confidential. The information is used only for purposes directly connected to the administration of the Commission's Blind Prevention and Sight Restoration Program and may not be released without the informed, written consent of the client, except as otherwise provided by law. ()

251. -- 999. (RESERVED).

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-0702

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 67-5309, 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 17, 2007.

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:

Changes to definitions, veterans preference, compensation of employees, moving expense reimbursement, probationary period for acting and temporaries, performance evaluation, military leave, overtime for executives and bone marrow and organ donor leave to comply with new code provisions.

This rulemaking will help reduce liability costs to the state by eliminating the accrual of earned administrative leave. The rule will allow for limited use of earned administrative leave for law enforcement and firefighting purposes; eliminate earned administrative leave for all other employees; allow for additional pay if extra hours are worked during a holiday week and; prohibit use of leaves if they result in additional compensation.

This rulemaking is necessary to streamline the rules to coincide with the statewide human resource policies. The changes remove redundant rules that are already covered in Idaho Code or can be better handled as a statewide policy; update the Department of Commerce and Labor to the Department of Labor; and add delegate authority to those agencies who will have delegate authority on human resource issues.

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 changes reflect the Governor's directive to consolidate rules and policies, and in the interest of time.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Judie Wright, Acting Administrator, at (208) 854-3054.

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 24, 2007.

DATED this 29th day of August, 2007.

Judie Wright
Acting Administrator
Division of Human Resources
700 W. State St.
P. O. Box 83720, Boise, ID 83720-0066
(208) 854-3054 phone
(208) 334-2438 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-0702

001. TITLE; ~~AND SCOPE, AND COMPLIANCE.~~

01. Title. These rules shall be cited as IDAPA 15.04.01, "Rules of the Division of Human Resources and Idaho Personnel Commission." (3-16-04)

02. Scope. These rules establish the policies and procedures of the Idaho Personnel System. (3-30-01)

~~**03. Compliance.** In accordance with the Legislature's intent in creating the Idaho Personnel Act and for consistency in rule administration, appointing authorities shall ensure that staff with human resource management responsibilities adhere to these administrative rules. Any person willfully violating provisions of the Idaho Personnel System or the rules established in this chapter, may be subject to discipline, up to and including dismissal under Rule 190, and/or sanctions provided in Section 67-5312, Idaho Code. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. ADDRESS AND PHONE NUMBERS OF THE DIVISION OF HUMAN RESOURCES AND IDAHO PERSONNEL COMMISSION.

The offices of the Division of Human Resources and Idaho Personnel Commission are located at 700 West State Street, Boise, Idaho 83720-0066. The phone number of the Commission and the Division of Human Resources is (208) 334-2263. Additional phone numbers are: a toll-free number, 1-800-554-JOBS (5627); ~~a toll-free TDD or telecommunications device for the deaf, 1-800-542-5738.~~ The Division's and Commission's FAX number is (208) 334-~~3182~~ 2438. (3-16-04)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

009. ~~DUTIES OF THE ADMINISTRATOR (RESERVED).~~

~~In addition to other duties as assigned by law, the administrator shall provide administrative support to the Idaho Personnel Commission, shall have custody of the books and records of the Division of Human Resources and the Commission, and shall maintain a record of the proceedings before the Commission and its hearing officers. (3-16-04)~~

010. DEFINITIONS.

Each of the terms defined in these rules shall have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

01. Administrator. The Administrator of the Division of Human Resources in the Office of the Governor. (3-16-04)

02. Allocation. The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

03. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

04. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

05. Appointing Authority. “Appointing Authority” means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any department. (Ref. Section 67-5302(3), Idaho Code) (3-16-04)

06. Appointment, Limited. The appointment of a person to a classified, position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

07. Appointment, Nonclassified. The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

08. Appointment, ~~Original or~~ Initial. ~~For purpose of assigning veteran’s preference points, the first time a person is hired by a state agency after attaining eligible veteran’s status.~~ Means the first time a qualified veteran is hired by the state. “Initial appointment” shall not include: (Ref. Section 65-506(3)2(4), Idaho Code and Rule 102.04) ~~(3-16-04)~~(____)

a. Jobs held by patients, inmates or students employed at a state institution; (____)

b. Temporary or casual employment; or (____)

c. An office filled by election. (____)

09. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Chapter 53, Title 67, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

10. Appointment, Probationary. The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

11. Appointment, Project Exempt. The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

12. Appointment, Provisional. The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)

13. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) (3-16-04)

14. Appointment, Temporary. The appointment of a person to a nonclassified position which is ~~not permanent in nature~~ limited in duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) department. Such appointments also may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) ~~(3-16-04)~~(____)

15. Base Pay. The rate of pay for performing a job which does not include bonuses, shift differentials, geographic differentials, overtime or other compensation premiums. (____)

16. Bureau Chief or Equivalent. An employee assigned responsibility for managing a bureau. A bureau is typically a principal unit of a division with several subordinate sections. A classification can be designated as equivalent to a bureau chief by the Administrator if it is structured similarly in terms of organization and level of responsibility. Such positions will typically have seven hundred (700) or greater Hay evaluation points. (____)

157. Certifiable Range. An examination score and a rank on an eligibility register sufficiently high to be among the top ten (10) available names, plus names of all individuals with scores identical to the tenth ranking

eligible, for certification to fill a position in the classification for which the register was established. (3-16-04)

168. Classification Specification. A written statement of the purpose and responsibilities characteristic of a classification, which includes the title, principal accountabilities, and minimum qualifications of education, training and experience, abilities, knowledge, skill, and other qualifications required to perform the work of the classification. (3-16-04)

179. Classification Schedule. All classification specifications utilized in classified service listed by title, classification code, and pay grade to which allocated. (3-16-04)

1820. Classified Service. That body of positions in state departments subject to Chapter 53, Title 67, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (7-1-87)

21. Compa-Ratio. The percentage difference between salary and salary range mid point. Compa-ratio is derived by dividing an employee's base pay rate by the salary range mid point. ()

1922. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309A, 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules; Division of Human Resources and Idaho Personnel Commission rules and policies; and departmental policies governing employee pay. (3-16-04)()

203. Compensation Schedule. The pay grades established by the Division of Human Resources by rule per Section 67-5309C(1), Idaho Code, and associated rates of pay ~~established in Rule 070.05.~~ (3-30-01)()

214. Consultant. An independent contractor who provides professional or technical advice, counsel, or service on a set fee basis. (Ref. Rule 050) (3-16-04)

225. Demotion. The reduction of an employee from a position which the employee occupies in one (1) classification to a position in another classification in a lower pay grade. (3-16-04)

236. Departmental Classification. A classification of positions that is unique to a department. (3-16-04)

247. Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. (7-1-87)

258. Due Process. As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code). (3-16-04)

269. Earned Administrative Leave (EAL). Paid leave for hours worked which exceed the regularly scheduled hours but do not result in overtime. ~~These hours may accrue after hours worked and hours on paid leave exceed forty (40) hours in one (1) workweek. In the case of those employees engaged in law enforcement, correctional, and firefighting activities characterized by irregular shift work schedules, EAL hours may accrue after hours worked and hours on paid leave exceed one hundred and sixty (160) hours in a period of twenty eight (28) consecutive days.~~ (3-30-01)()

a. Eligibility to Earn EAL. Employees engaged in law enforcement, correctional, and firefighting activities characterized by irregular shift work schedules, can accrue earned administrative leave, if hours earned but not worked exceed one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days. All other employees are ineligible to accrue EAL. ()

2730. Employee. Any person in the employ of a state department who is paid a salary or wages. (4-5-85)

2831. Employment History. The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works,

including the official reason(s) for separation from employment but not including accrued leave balances or usage. (3-30-01)

2932. Examination. The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)

303. Factoring. The assignment of ~~Hay~~ evaluation points to a classification in accordance with ~~Section 67-5309B, Idaho Code, and~~ Rule 074. (~~3-30-01~~)(____)

314. General Classification. A classification of positions that is common to more than one participating department. (3-16-04)

325. Good Cause. The conduct of a reasonable person in the same or similar circumstances. (7-1-87)

36. Hay System. The methodology currently used by the state of Idaho for establishing the relative value of jobs and is used as a dimension of the pay system. The Hay system makes use of compensable factors or job attributes as a basis for evaluating the relative worth of one job against another. (____)

337. Hiring List. A hiring list is a subset of a register (Rule 010.61). A hiring list consists of the top ten (10) individuals, plus all individuals tied for the tenth position, certified as eligible for a specific recruitment. Candidates for reinstatement and/or transfer may be considered and are provided in addition to the top ten. (3-16-04)

348. Hours Worked: (7-1-87)

a. Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave or other approved leaves of absence, and excluding on-call time. (Ref. Rule 010.409) (~~3-30-01~~)(____)

b. Travel time shall be compensated pursuant to policy set forth by the Board of Examiners. (3-30-01)

c. Attendance at lectures, meetings, training programs and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (5-15-85)

359. Incumbent. Any person holding a classified or non-classified position in state service. (7-1-87)

3640. Independent Contractor. Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule 010.21) (3-16-04)

3741. Interested Person. A person or department directly affected by a rule, statute or department action or inaction. (6-30-78)

3842. Intoxication. Being under the influence of alcohol, or misuse of medication or controlled substances. (Ref. Rule 190.01.f.) (3-30-01)

3943. Involuntary Transfer. A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. (3-30-01)

44. Key Employee. For veteran purposes, an individual specifically hired for an "at will" or nonclassified position for which there is no or a limited selection process, such as a position as a private secretary or deputy to an official who holds a confidential relationship to the appointing or employing officer. (Ref. Section 65-502(5), Idaho Code). (____)

405. Layoff. An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. (4-5-85)

416. Layoff Unit (Organizational Unit). A smaller geographic, programmatic, or other identified

subdivision of a department determined by the appointing authority and approved by the administrator for the purpose of conducting a reduction in force (Rule 140). (3-16-04)

427. Leave of Absence with Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee shall be compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: vacation leave, sick leave, special leave situations, and compensatory time off for overtime worked. (3-30-01)

438. Leave of Absence Without Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee shall not be compensated. (7-1-87)

449. Light or Limited Duty. A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. (3-16-04)

450. Merit Increase. The advancement of an employee's base pay compensation in accordance with Section 67-5309C(b)B, Idaho Code. (7-1-87)(____)

51. Merit Increase Matrix. A pay distribution tool adopted by the state of Idaho used to advance employees pay based on performance and market data. (____)

52. Military Duty (for veteran preference points). Training and service performed by an inductee, enlistee or reservist or any entrant into the armed forces of the United States, provided "military duty" shall not include active duty training as a reservist in the armed forces of the United States or as a member of the National Guard of the United States where the call is for training only. (Ref. Section 65-502(6), Idaho Code.) (____)

4653. Minimum Qualification Specialty. A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. (3-16-04)

4754. New Classification. A classification that is not essentially described by any existing job classification. (3-16-04)

4855. Occasional or Sporadic Work. Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (7-1-87)

4956. On-Call Time. Time when an employee is required to carry a pager, cellular phone, or to leave word at home or with the department where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. (3-30-01)

507. Overtime. Those hours defined as such in Section 67-5302(4920), Idaho Code, excluding any time, such as traded time and occasional or sporadic work, that is specifically excluded from the overtime calculation by federal law. (7-1-87)(____)

518. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309C(b)(i)D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B(a), Idaho Code, as approved by the administrator. (3-30-01)(____)

59. Permanent. An employee in the classified service who has successfully completed entrance probation. Such employees remain subject to separation as set forth in these rules and Idaho Code. (____)

5260. Position, Classified. A position subject to Chapter 53, Title 67, Idaho Code, and these rules in which one (1) person is hired as a full-time or part-time employee; or in which two (2) or more persons share in the aggregate of the position. (7-1-87)

5361. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he or she occupies in one (1) classification to a position in another classification having

a higher paygrade. (3-16-04)

5462. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position which he or she occupies in one classification to a position in another classification having greater ~~Hay~~ Hay evaluation points, more responsibility, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (~~3-16-04~~)()

5563. Rating/Job Point Factoring. The number of ~~Hay~~ Hay evaluation points assigned to a classification in accordance with Rule 074. (~~3-16-04~~)()

564. Reasonable Accommodation. An adjustment made to a job and/or work environment that enables a qualified individual with a disability to perform the essential functions of the position and would not cause undue hardship on the operation of the department. (Ref. Rule 190.01.c.) (7-1-87)

5765. Reclassification of a Position. A change of a position from the classification to which it is assigned to another classification. (3-16-04)

5866. Reclassification of an Employee. ~~Means~~ A change in the classification assigned to the employee to properly reflect the duties and responsibilities assigned to that employee by an appointing authority. (~~3-16-04~~)()

5967. Recruitment. The process of seeking applicants for employment. (3-16-04)

608. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)

649. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator or delegate. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (~~3-16-04~~)()

6270. Reinstatement. The reappointment of a former or current classified employee pursuant to Rule 124. (3-16-04)

6371. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (Ref. Rule 244) (3-16-04)

6472. Respondent. The party whose interests are adverse to those of the appellant. (7-1-93)

73. Sample Merit Increase Matrix.

SAMPLE MERIT INCREASE MATRIX				
<u>Employees Total Salaries</u>	<u>Does Not Achieve Performance Standards</u>	<u>Achieves Performance Standards</u>	<u>Solid/Sustained Performance</u>	<u>Exemplary Performance</u>
<u>Performance Percentage Guideline</u>	3%	17%	60%	20%
<u>Compa Ratio</u>	<u>Percentage Increase</u>			
120% to 125%	0%	0.50%	1.50%	2.50%
115% to 119%	0%	1.00%	2.00%	3.00%

SAMPLE MERIT INCREASE MATRIX				
<u>Employees Total Salaries</u>	<u>Does Not Achieve Performance Standards</u>	<u>Achieves Performance Standards</u>	<u>Solid/Sustained Performance</u>	<u>Exemplary Performance</u>
<u>Performance Percentage Guideline</u>	3%	17%	60%	20%
<u>Compa Ratio</u>	<u>Percentage Increase</u>			
110% to 115%	0%	1.50%	2.50%	3.50%
105% to 109%	0%	2.00%	3.00%	4.00%
100% to 104%	0%	2.50%	3.50%	4.50%
95% to 99%	0%	3.00%	4.00%	5.00%
90% to 94%	0%	3.50%	4.50%	5.50%
85% to 89%	0%	4.00%	5.00%	6.00%
80% to 84%	0%	4.50%	5.50%	6.50%
75% to 79%	0%	5.00%	6.00%	7.00%

()

- 6574. Status.** The character of an employee’s appointment. (7-1-77)
- 6675. Suspension.** An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. (7-1-87)
- 676. Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Rule 152. (3-16-04)
- 6877. Traded Time.** Those hours an employee agrees to substitute for another employee during scheduled hours of work, where both work in the same capacity, the agreement to substitute is solely at the employees’ option, and the agreement is approved by the agency by whatever manner is customary. (7-1-87)
- 6978. Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)
- 709. Underfill.** The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (3-16-04)
- 80. USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 United States Code, Sections 4301-4333. ()
- 781. Veteran.** Rule 020 defines veteran for the purpose of selection, hiring, and retention preference. (3-16-04)
- 782. Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Rule 073) (12-10-90)
- 011. -- 0189. (RESERVED).**

~~019. BASIC MERIT REQUIREMENTS OF THE PERSONNEL SYSTEM.~~

~~All appointments, promotions and separations in the classified service shall be based on competence, valid job requirements, and individual performance. (3-30-01)~~

020. VETERANS PREFERENCE.

Preference must be given to qualified veterans ~~who are residents of Idaho~~ in all employment actions including hiring, transfer, promotion initial appointment, and retention except for ~~confidential secretarial~~ key employee positions. (3-30-01)(____)

~~01. **Veteran Defined (for preference purposes).** Any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States Department of Veterans Affairs for the purpose of awarding federal veterans benefits and who has been discharged from service under honorable conditions. (Ref. Sections 65-509 and 65-510, Idaho Code) (3-30-01)~~

~~02. **War Veteran (War Era) and Disabled Veteran Defined (for preference points on competitive exam).** War veterans and Disabled veterans who are residents of the state of Idaho, and their widows or spouses, when qualified under state law shall have additional points added to a passing score and placed on the register in accordance with the provisions set forth in Rule 102. (Ref. Rule 093.03, and Sections 65-502, 506, 507, and 67-5309(f), Idaho Code) (3-16-04)~~

~~03. **Promotion/Transfer Consideration.** Qualified veterans shall be given additional consideration in promotion and transfer decisions. When candidates are considered to be equal based on valid job related factors, veterans shall be preferred. (Ref. Sections 65-502, 65-504, 65-509, and 67-5309, Idaho Code) (3-16-04)~~

~~04. **Retention.** War Veterans (War Era) (as defined in Chapter 5, Title 65, Idaho Code) shall receive the equivalent of three (3) years of satisfactory service in additional points awarded towards the total calculation of retention points in a reduction of work force determination. (Ref. Rule 140 and Section 65-503, Idaho Code) (3-16-04)~~

021. DISCRIMINATION PROHIBITED.

No person shall be discriminated against in regards to appointments, promotions, demotions, separations, transfers, compensation, or other terms, conditions, or privileges of employment because of race, national origin, color, sex, age, religion, disability, or veteran status (unless under other than honorable conditions). (3-30-01)

022. PROHIBITED QUESTIONS.

All questions on applications and examinations shall be based on valid job requirements. Questions which impermissibly discriminate on the basis of race, national origin, color, sex, age, religion, disability, political affiliation, or veteran status are prohibited. Questions regarding veteran status for compliance with veterans' preference are permitted. (Ref. Rule 020) (3-16-04)

023. BONA FIDE OCCUPATIONAL QUALIFICATION.

Qualification requirements based on age or gender may be established as necessary for specific positions by the Administrator of the Division of Human Resources. (3-30-01)

024. CONFLICT OF INTEREST AND PERSONAL CONDUCT.

The maintenance of a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees. All appointing authorities shall establish such policies and standards necessary to implement Rule 273. (3-16-04)

0251. NEPOTISM.

No employee shall work under the immediate supervision of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. (8-1-81)

0262. DUAL EMPLOYMENT.

There shall be no conflicting hours of work when a classified employee is employed by more than one (1) state

department. The employee shall obtain approval from all appointing authorities concerned prior to beginning dual employment. (Ref. Rule 260) (4-5-85)(____)

~~0273.~~ -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.

Nothing in these rules shall prohibit the use of independent contractors or consultants who are paid on a fee basis for legal, medical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state department. (7-1-94)

01. No Fee Basis. No position in the state classified service shall be filled by a consultant or independent contractor on a fee basis. (8-1-81)

02. Limited Use Only. Individuals employed through contracts with temporary services or professional staffing agencies shall be utilized only for short-term situations. (3-30-01)

~~03. Conflict of Interest/Nepotism.~~ Agency policies regarding conflict of interest/nepotism should address the award of work to consultants and contractors. See Rule 024 and 025. Also Ref. Section 18-1359, Idaho Code. (3-16-04)

043. Not to Be Treated as Employees. Independent contractors, their staff or consultants shall not be treated as employees. ~~Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions.~~ (3-16-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~061. ANALYSIS OF CLASSIFICATIONS.~~

~~The Division of Human Resources shall assist appointing authorities in the analysis of positions in determining proper classification and shall, at the determination of the administrator, conduct independent classification reviews of the various departments.~~ (4-5-85)

~~062. AUTHORITY.~~

~~The administrator shall have the responsibility and authority to classify positions in the classification schedule.~~ (3-30-01)

0631. REVIEW OF CLASSIFICATION SCHEDULE.

The administrator, in cooperation with the various appointing authorities, shall ensure the appropriateness and accuracy of classification specifications. (3-16-04)

~~064. AMENDMENT OF CLASSIFICATION SCHEDULE.~~

~~01. Changes to Classifications.~~ Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority shall submit proposed changes to the administrator. (3-30-01)

~~02. Approval.~~ Each appointing authority, prior to establishing any new position within the department, shall obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. (3-30-01)

~~03. Assignment to Pay Grade Required.~~ No person shall be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in

~~accordance with these rules. (3-30-01)~~

065. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.

~~01. **New and Refactored Classifications.** New classifications of work and revised classifications require approval by both the administrator and the Division of Financial Management administrator when there is a fiscal impact. (3-16-04)~~

~~02. **Revised and Deleted Classifications.** Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. (3-16-04)~~

066. ABOLISHMENT OF POSITIONS.

~~An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 147. (7-1-87)~~

067. RECLASSIFICATION OF POSITIONS.

~~01. **Procedure.** Positions may be reclassified in the same pay grade, upward, or downward as determined by an based on analysis by Division of Human Resources ~~staff or delegate~~ of the duties and responsibilities ~~assigned by appointing authorities to specific positions~~. An incumbent ~~occupying a reclassified position~~ shall be properly classified by an appointing authority within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified. (4-5-85)()~~

~~02. **Effective Date.** Reclassifications of positions ~~shall not be effective until they are approved by the administrator, but~~ may be retroactive to the beginning of the pay period ~~during which approval is granted~~. Reclassification of an employee shall not precede the effective date of the reclassification of the position. (3-30-01)()~~

068. VIOLATIONS.

~~Accurate position classification is the foundation for providing equal pay for equal work, identification of actual work performed, fair employment and equal opportunity for promotions, and equitable compensation. Upon the administrator's determination that classification rules have been violated, the appointing authority will be informed and provided thirty (30) days to take actions necessary to correct the situation or submit a corrective action plan to the administrator. If these actions do not occur, the administrator will inform the employee, the appointing authority, and the state controller that the employee is being compensated in violation of these rules. (Ref. Sections 67-5308 and 67-5312, Idaho Code) (3-16-04)~~

063. -- 069. (RESERVED).

070. COMPENSATION OF EMPLOYEES.

~~01. **The Hay System.** The Division of Human Resources will use the Hay method of point factoring to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code) (3-16-04)~~

~~02. **Salary Surveys.** The Division of Human Resources shall conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service. (3-16-04)~~

~~031. **Relevant Labor Markets.** Labor markets used for wage comparison shall ~~be based on the normal recruiting market~~ consist of public and private employers in the state of Idaho for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. For those job classifications with no private or public counterparts, the comparator market will be public employers including, but not limited to, the states of Arizona, Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. (3-16-04)()~~

~~a. When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho. (3-16-04)~~

~~b. For classifications with a regional recruiting area, the comparator market will be from public and private employers from the neighboring states and Idaho. For those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. (3-16-04)~~

~~c. Recruitment and retention issues will be used to determine the need for additional special market surveys. (3-16-04)~~

02. Assignment to Pay Grade. ()

As a basis for pay equity the Division of Human Resources will use a combination of market data and point factoring to determine the relative value of each classification. (Ref. Rule 074.01 and Section 67-5309B, Idaho Code) ()

~~043. Salary Schedule. The administrator shall adopt the salary ranges for the pay grades in Section 67-5309C, Idaho Code, in a public meeting after notice, and a current salary schedule shall be made available to the public and all appointing authorities. (3-16-04)()~~

04. Review and Reconsideration Requests. If an agency or individual believes the pay grade assignment is improper regarding the accuracy of Hay point valuation or market average job matching, a request for review must be submitted to DHR prior to appeal. DHR staff will work to verify or change the assignment as the analysis indicates and respond within thirty (30) days. ()

~~05. Compensation Plan. Significant changes to components of the compensation plan shall be presented in a public meeting after notice. Disputed Assignment Cannot Be Resolved. If the disputed assignment cannot be resolved, individuals may appeal the decision to the Idaho Personnel Commission within thirty-five (35) days of the DHR final decision. (3-30-01)()~~

071. COMPENSATION PLAN REVIEWS MERIT INCREASE MATRIX.

01. Review of Compensation Schedule. The Division of Human Resources in cooperation with the various appointing authorities shall conduct reviews of the compensation plan. Salary Increases. Salary increases must be based on a merit increase matrix approved by DHR. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions and recruitment and retention awards are not subject to a matrix. (3-30-01)()

02. Affirmation of Factoring. In the review of classifications, the factoring of a class may be affirmed if there has been no significant change in the duties of the classification and the factoring appears to be correct. Temporary Merit Increases. Temporary merit increases shall be based on performance and distributed using a matrix model unless an exception has been granted pursuant to Subsection 071.03 (7-1-93)()

03. Exceptions to Use of a Matrix. Such as equity adjustments, can be made on a case-by-case basis, subject to the approval of the administrator. ()

072. OPERATION OF COMPENSATION PLAN.

01. Authorized Pay Rate. No employee in the state classified service shall be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification, except as provided in Section 67-5309C(b)(i), Idaho Code for employees who have performance evaluations indicating their work does not achieve standards at the time of a paygrade structure revision. Such employees may not be paid outside the pay grade for more than one thousand forty (1040) hours of credited state service. (3-16-04)()

02. Starting Salary. The starting salary for a new appointee may be anywhere within the paygrade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (Ref. Section 67-5309C(b), Idaho Code) (3-16-04)

032. Payline Exceptions. Temporary assignments to a new pay grade may be made by the administrator pursuant to Section 67-5309(e)(b)(i)D, Idaho Code. Such assignments shall apply to an entire classification for the purpose of recruitment or retention and shall be reviewed annually to determine the need for continuance. (3-16-04)

~~**04. Salary After Reappointment From Layoff.** An employee appointed by the agency that laid them off (Rule 101.01 and Rule 146) shall be paid in the current pay grade for the classification to which reappointed or at the same payrate he or she received immediately preceding layoff, whichever is greater but not to exceed the maximum of the current paygrade. (3-16-04)~~

~~**05. Salary upon Transfer.** (7-10-88)~~

~~**a.** A transfer between departments (Rule 125) in the same classification or one (1) of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (3-16-04)~~

~~**b.** If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-16-04)~~

~~**06. Salary upon Reinstatement.** Unless related to reemployment after a lay off, the salary of a reinstated employee (Rule 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (3-16-04)~~

~~**07. Salary upon Downward Reassignment.** When a classification is reassigned downward the employee's salary will be protected to the maximum within the new paygrade. (3-16-04)~~

~~**08. Salary upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Sections 65-511 or 65-512, Idaho Code, shall be paid at the comparable rate in the current pay grade for the classification to which he or she was assigned prior to leaving for military service. (3-30-01)~~

073. CALCULATION OF PAY.

01. Standard Calculation of Pay. For other than police, correctional officers, or fire employees, pay shall be calculated in the following order: (3-30-01)

- a.** Holiday pay; (12-10-90)
- b.** All hours worked on a holiday as overtime; (12-10-90)
- c.** All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work and traded time; (12-10-90)
- d.** Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e.** All remaining hours worked at the employee's regular rate of pay, ~~with the optional use of earned administrative leave~~. Shift differential pay shall be calculated according to Rule 075 and paid in addition to any other compensation. (Ref. Sections 67-5302(~~1920~~), 67-5329~~8~~, Idaho Code; Rules 010.34, 010.41, 010.42, 010.48, 010.50, and 073.03) ~~(3-16-04)(_____)~~

02. Calculation of Pay for Police, Correctional Officers, and Fire Employees. Police, Correctional Officers, and fire employees on a twenty-eight (28) day work schedule shall be compensated as described above, except that overtime shall be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek, and earned administrative leave shall be calculated based on eighty (80) hours in a biweekly pay period instead of on a weekly basis. (3-30-01)

03. Holiday Pay Calculation. (7-1-87)

~~a. All classified employees of like classification, shall be treated equally with reference to hours of employment, holidays, and vacation leave. (Ref. Section 67-5326, Idaho Code) Paid time off for holidays is a benefit, and as such, must be allocated in a substantially similar manner to all employees in the same classification.~~

~~(3-30-01)(____)~~

b. A full-time employee shall receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee shall receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-16-04)

c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-16-04)

d. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

e. Schedules resulting in holiday time off in excess of eight (8) hours ~~must only~~ may be approved ~~in such a way as to treat all members of the affected job classification equally by the appointing authority if included in the agency compensation plan.~~ Appointing authorities may also suspend flex schedules during holiday weeks or may grant administrative leave or otherwise adjust work schedules to ensure equity internal consistency.

~~(3-30-01)(____)~~

~~04. **Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his or her classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190.~~

~~(3-16-04)~~

~~05. **Temporary Merit Increases.** Temporary merit increases shall not be calculated retroactively. (Ref. Section 67-5309C(b)(ii), Idaho Code)~~

~~(7-10-88)~~

~~06. **Department Salary Administration Policies (a/k/a Compensation Plans).** Each department shall adopt and file with the administrator current salary administration policies for the following actions to insure fairness and equity for all employees within that department:-~~

~~(3-30-01)~~

~~a. Merit increases and bonuses (Section 67-5309C(b), Idaho Code, and Rule 073.05.);~~ (7-1-94)

~~b. Reclassification (Rule 067);~~ (4-5-85)

~~b. Demotions (Rule 179);~~ (3-16-04)

~~d. Intradepartmental transfers (Rule 125);~~ (3-16-04)

~~e. Failure to complete promotional probationary periods (Rule 150.);~~ (3-16-04)

~~f. Promotions (Rule 169);~~ (3-16-04)

~~g. On-call time (Rule 010.49);~~ (3-16-04)

~~07. **Salaries for Temporary Appointments.** Except as provided by the following rule, salaries for employees hired under temporary and project exempt appointments will be governed by Section 59-1603, Idaho Code.~~

~~(4-5-85)~~

074. ASSIGNMENT OF HAY EVALUATION POINTS.

~~01. **Assignment to Pay Grade.** Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each~~

~~classification. (3-16-04)~~

041. Factoring Process. Hay evaluation points shall be assigned to a classification, ~~through the following methods, which may be used separately or in combination with the others:~~ (3-16-04)()

~~**a. Informal Agreement.** The appointing authority presents the new or revised classification and factoring recommendation informally to the administrator of the Division of Human Resources or designee and there is agreement on the points assigned. (3-16-04)~~

~~**b. Factoring Session.** The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference. (3-16-04)~~

~~**e. Hay Management Consultants.** After consultation with the appointing authority, the administrator may refer the classification to Hay Management Consultants for a factoring analysis. (3-16-04)~~

~~**02. Guide Charts.** The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-16-04)~~

~~**03. Factoring Benchmarks.** The factoring benchmarks correlated by Hay Management Consultants shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-16-04)()~~

052. Approval. After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division of Human Resources shall have final approval of the Hay evaluation points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (3-16-04)

075. SHIFT DIFFERENTIAL.

Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. Ref. Section 67-5309(u), Idaho Code) ()

~~**01. Eligibility.** (12-10-90)~~

~~**a.** Shift differential compensation shall be paid if fifty percent (50%) or more of an employee's assigned hours in a workweek occur between 6 p.m. and 7 a.m. Leave hours taken shall be regarded as having been assigned during the same hours that the employee would have worked. (12-10-90)~~

~~**b.** Shift differential compensation shall be paid for all hours worked by an employee whose primary responsibility is to work in place of an absent employee and, whose assigned schedule varies from nights, days, and/or swing. (3-16-04)~~

~~**02. Shift Pay Rate.** Shift differential compensation shall be paid at the rate of five percent (5%). (7-1-94)~~

~~**03. Hours Paid at Shift Rate.** If an employee qualifies for shift differential pay during a workweek, the shift rate shall be calculated for all hours reported in that week, including holiday pay, overtime and leave taken. The resulting amount of shift differential pay shall be included in the compensation for that pay period. (12-10-90)~~

~~**04. Ineligible Employees.** Employees who are ineligible for cash compensation and compensatory time for overtime work are ineligible for shift differential compensation. (Ref. Section 67-5329(1), Idaho Code) (3-30-01)~~

~~05. **Multiple Positions.** For an employee who has more than one (1) position, eligibility for shift differential shall be determined by position. (2-6-92)~~

~~076. **ALTERNATIVE WORK SCHEDULES AND LOCATIONS.**~~

~~An appointing authority may allow alternative work schedules and locations including flexible schedules, job-sharing, and telecommuting when determined to be in the best interests of the state and the employee. Internal policies on such options must be published for all employees and filed with the administrator. If applicable, agency policies must address: (3-16-04)~~

- ~~a. Conditions of participation; (3-16-04)~~
- ~~b. Equipment use and provision; (3-16-04)~~
- ~~c. Workers compensation and liability issues; and (3-16-04)~~
- ~~d. Confidentiality. (3-16-04)~~

~~077. **BONUSES.**~~

~~01. **Performance Bonuses.** Up to a total of one thousand dollars (\$1,000) may be awarded each fiscal year, in recognition of excellent performance. A memo documenting such performance should be provided to the employee and placed in their personnel file. (Ref. Section 67-5309C(b)(iii), Idaho Code) (3-16-04)~~

~~02. **State Resource Savings Bonuses.** Up to a total of one thousand dollars (\$1,000) may also be awarded each fiscal year, in recognition of an employee's idea to save state resources. Each agency will develop an internal procedure to provide for prompt consideration and distribution of awards. (Ref. Section 67-5309C(b)(iv), Idaho Code) (3-16-04)~~

~~a. Suggestions, that when implemented result in significant savings, may result in a larger bonus, but such amounts must be approved by the Board of Examiners. (3-16-04)~~

~~b. Suggestions aimed at saving money outside the employee's state agency should be submitted to the employee's agency first and then routed to the Division of Human Resources for centralized coordination and tracking. The Division of Human Resources will forward the suggestion to the agency able to address implementation. (3-16-04)~~

~~078. -- 079. (RESERVED).~~

080. RECRUITMENT.

The administrator shall cooperate with the appointing authority of each department and with the director of the Department of ~~Commerce and~~ Labor in the operation of a coordinated recruiting program. (4-5-85)(____)

~~081. **PURPOSE OF EXAMINATIONS.**~~

~~The administrator shall conduct examinations for the purpose of maintaining eligibility registers. (8-1-81)~~

~~082. **METHODS OF RECRUITMENT.**~~

~~For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, department promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. (3-16-04)~~

0831. (RESERVED) MOVING EXPENSES REIMBURSEMENT.

The head of any department, office, or institution shall have authority to reimburse moving expense for current or newly hired state employees up to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000) whichever is less. Reimbursable expenses must be in compliance with the State Moving Policy in effect at the time of the move. (Ref. SCO website, State Board of Examiners.) (____)

01. Exceptions to the Maximum Expense Reimbursement Limits. Exceptions to the maximum

expense reimbursement limits may be approved in advance by the department director. ()

02. **Report Submission to Division of Financial Management.** Agencies shall submit a report to the Division of Financial Management and the Legislative Services Office by October 1 on all moving expense reimbursements granted in the preceding fiscal year. (Ref. Section 67-5337, Idaho Code.) ()

0842. ANNOUNCEMENT OF RECRUITMENT.

01. Distribution of Announcements. The announcement of each open-competitive recruitment shall be supplied to the appropriate local offices of the Idaho Department of ~~Commerce and~~ Labor and to other locations determined necessary by the administrator to develop a register of eligibles. If the open-competitive recruitment has been requested by the appointing authority in lieu of a promotional recruitment, it shall be his or her responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that department prior to its expiration date. (Ref. Rule 169) ~~(3-16-04)~~()

02. Posting of Promotional Announcements. The announcement for each promotional recruitment shall be supplied to the appointing authority of each affected department. It shall be his or her responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the department prior to the expiration date. (3-16-04)

0853. CONTENT OF ANNOUNCEMENTS.

Each announcement shall contain the title of the classification, characteristic duties and responsibilities, salary, minimum qualifications, nature of examination, qualifying score, closing date, equal opportunity and veterans preference notice, and other pertinent information. (3-16-04)

0864. APPLICATIONS.

01. Form. All applications shall be filed in the form ~~prescribed~~ approved by the administrator or delegate. ~~(3-16-04)~~()

02. Filing of Applications. Applications are currently accepted by internet application system, mail, personal delivery, electronic mail and FAX to the Division of Human Resources or delegate. An application will also be considered timely if any Job Service or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources or delegate, and ensures that it is delivered to the Division of Human Resources or delegate by close of the next business day. ~~(3-16-04)~~()

03. Application by Military Personnel. An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization ~~of no more than up to~~ one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. ~~The applicant must be a resident of Idaho when application is made.~~ (Ref. Sections 65-502~~3~~ and 67-5309(f), Idaho Code) ~~(3-16-04)~~()

04. Application by Disabled Veterans. A disabled veteran may file an application at any time up until a selection has been made for any classification for which the Division of Human Resources or delegate maintains a register as a source for future job openings or for which a register is about to be established, provided he or she has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a ~~classification~~ competitive position in the same ~~or higher~~ pay grade as the classification for which application is made. ~~The applicant must be a resident of Idaho when application is made.~~ (Ref. Sections 65-502~~3~~, 65-507 and 67-5309(f), Idaho Code) ~~(3-16-04)~~()

~~**05. Promotion of Entrance Probationary Employee.** Any classified employee on entrance probation may file an application for a promotional opportunity and be placed on a register but may not be appointed until permanent status has been attained. (Ref. Rules 159.01. and 169.03.)~~ ~~(3-16-04)~~

~~**06. Disclosure of Information for Hiring Purposes.** By submitting an application, an individual is~~

~~deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 9-340C, Idaho Code).~~ (12-10-90)

0875. DENIAL OF APPLICATIONS.

- 01. Basis.** The administrator or delegate may choose not to process an application if: ~~(3-16-04)~~(____)
- a.** The applicant will not meet the minimum qualifications specified in the announcement at the time set for appointment. (3-30-01)
- b.** The application was not received on or before the closing date for acceptance of applications. (3-30-01)
- c.** A background investigation or examination of an applicant discloses that the applicant committed an act which is cause for dismissal as provided in Rule 190. (3-30-01)

02. Further Actions. When any such finding under Rule 087.01 is made, the administrator or delegate may deny the application and may cancel the eligibility of the applicant if he or she has already attained a place on the eligibility register. If the applicant has already received appointment, the administrator or delegate may take appropriate action to have the employee removed from the position. ~~(3-30-01)~~(____)

0886. -- 089. (RESERVED).

089. LOCATION OF EXAMINATIONS.

~~To enhance recruiting efforts, agencies may request examinations be held in specific areas of the state, by approved proctors outside the state of Idaho, or via electronic communications.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

091. PROHIBITED FACTORS.

~~No part of any examination shall include any question designed to reveal prohibited information including the political or religious affiliation or belief, national origin or race of any candidate.~~ (3-30-01)

0921. PREPARATION OF EXAMINATIONS.

01. Content of Examinations. Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. So far as is practical, promotional examinations shall be similar to corresponding open-competitive examinations and the same standards shall be applied in determining scores. (3-30-01)

02. Job Analysis and Confidentiality. Contents of each examination shall be determined by the Division of Human Resources' ~~staff~~ or delegate on the basis of appropriate professional techniques and procedures of job analysis and test development. No information concerning the specific content of the examination shall be divulged to unauthorized personnel by Division of Human Resources' ~~staff~~ or delegate or other personnel who have access to the examinations. ~~(4-5-85)~~(____)

03. Subject-Matter Experts. The Division of Human Resources' ~~staff~~ or delegate may, at their discretion, collaborate with appointing authorities, incumbents, subject-matter experts, or other qualified persons in the preparation of examinations. ~~(8-1-81)~~(____)

0932. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.

01. Designation of Examiners. The examinations shall be conducted and rated by persons designated by the administrator or delegate. ~~(8-1-81)~~(____)

02. Scoring of Examinations. Each examination shall be rated for final scores on the basis of one hundred (100) point maximum. The Division of Human Resources' ~~staff~~ or ~~delegate~~ shall use appropriate statistical and professional techniques and procedures in determining passing points and final scores. (3-30-01)(____)

03. Veterans Preference. (3-16-04)

a. ~~War~~ Veterans and disabled veterans points, when applicable under state law, shall be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. ~~Veterans preference points are only applicable when the applicant is a resident of Idaho. Five (5) percentage points shall be added to the earned rating of any veteran as defined in Section 65-502, Idaho Code, and the widow or widower of any veteran as defined in Section 65-502, Idaho Code, as long as he or she remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points shall be added to the earned rating of any disabled veteran as defined in Section 65-502, Idaho Code, the widow or widower of the same as long as he or she remains unmarried, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers shall be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from the merit system shall be placed on the register in accordance with their augmented rating. (Ref. Sections 65-5064 and 67-5309(f), Idaho Code)~~ (3-16-04)(____)

b. ~~War~~ Veterans and disabled veterans preference points shall not be added to the raw score in order to achieve a passing score. (3-16-04)(____)

04. Failing Score. Failure in any part of the examination may disqualify the applicant in the entire examination and from having his or her name placed on the register. Final scores shall be computed in accordance with weights assigned the individual factors in the total examination. (4-5-85)

05. Use of Alternate Announcement. An examination may be rated for another classification under current announcement at the discretion of the administrator. (3-16-04)

06. Waiver of Examination. Notwithstanding other provisions in these rules, when ten (10) or fewer applications are received from applicants meeting minimum qualifications for a position announcement and there is no existing register, the announced examination may be waived by the administrator or delegate. These applicants shall be eligible for appointment and their placement on the register shall take into account veterans' preference. When using registers developed in this manner, appointing authorities shall provide the opportunity for placement interviews for each applicant on the register. (3-16-04)(____)

~~**07- Examination Upon Reclassification.** An employee occupying a position which is reclassified (Rule 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified. (3-16-04)~~

~~**094. ELIMINATION TESTS.**~~

~~Wherever it is stated in the announcement that an applicant must qualify in a series of different tests or satisfy other requirements to become eligible for appointment, and the applicant fails to meet such requirements, he or she shall not be permitted to take any further tests in the examination, and such tests if previously given need not be rated. (4-5-85)~~

~~**095. NOTICE AND RECORD OF RESULTS OF EXAMINATION.**~~

~~All competitors shall be notified of their final scores electronically or by mail. The records of scores shall be held as official records for the life of the resulting eligibility registers. (3-16-04)~~

0963. REVIEW AND APPEAL.

~~**01- Review of Examination Content and Scoring Material.** Any competitor, or his/her representative authorized in writing, shall be permitted to inspect his/her own papers and records, except examination content and scoring material, upon application in person at the office of the Division of Human Resources in Boise during business hours. Alternative arrangements are available for competitors located outside of Boise. Review shall be~~

~~limited to the time allowed for appeal of examination scores.~~

~~(3-16-04)~~

~~**02. Appeal of Examination Score.** Any competitor, by written request to the administrator, may appeal his or her examination score within thirty-five (35) calendar days after the notice was sent to such competitor. *The administrator shall review the test, may change the score, and may take any other action necessary to insure the integrity and quality of the testing process. When such review discloses error affecting the scores of other competitors, the review and adjustment shall include their scores. The administrator shall provide a written explanation to competitors whose scores are affected by the action taken.*~~

~~(3-16-04)(____)~~

0974. ALTERNATIVE EXAMINATION PROCESS FOR PERSONS WITH DISABILITIES.

01. Conditions for Eligibility. Notwithstanding other provisions in these rules, an agency may appoint an individual directly into entrance or promotional probationary status in a classification if the Division of Vocational Rehabilitation, the Idaho Commission for the Blind, or the Industrial Commission certifies the following: (3-16-04)

a. That the individual has a physical or mental impairment that substantially limits one (1) or more major life activities, as further defined under state or federal law; (3-30-01)

b. That the individual meets the minimum qualifications of the classification and is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3-16-04)

c. That the individual lacks competitiveness in the examination process due to the disability. (Ref. Section 67-5309(e), Idaho Code.) (3-16-04)

02. Concurrence Required. The certification shall be made with the concurrence of Division of Human Resources. (3-30-01)

03. Probationary Period. The probationary period shall be the sole examination for individuals certified under this alternative examination process. (Ref. Rule 150). (7-1-93)

0985. -- 099. (RESERVED).

100. ELIGIBILITY REGISTERS.

Eligibility registers shall be established by the Division of Human Resources² ~~staff~~ or ~~delegate~~ to provide for fair and impartial selection for entrance into the state classified service and for promotion on the basis of competitive merit examinations. (4-5-85)(____)

(BREAK IN CONTINUITY OF SECTIONS)

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates shall be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (3-16-04)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference shall be placed on the open-competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule 093.03, and Section 65-5064, Idaho Code) (3-16-04)(____)

03. Disabled Veterans' Preference. Eligible ten percent (10%) or more disabled veterans or purple heart recipients or surviving spouses entitled to ten (10) point preference shall be placed at the top of on the open-competitive register ~~above all other non-preference candidates~~ in order of their final score on the examination augmented by preference points. Veterans who have a current service-connected disability of thirty percent (30%) or more, shall be offered an interview when their final score on the hiring list places them within the top ten (10) qualified candidates. If more than ten (10) thirty percent (30%) or greater disabled veterans place in the top ten (10)

qualified scores of a hiring list, at least ten (10) shall be offered an interview. (Ref. Rule 093.03 and Section 65-506, Idaho Code) ~~(3-16-04)~~(____)

04. Veterans' Preference Points for Initial Appointment Only. The additional points added by reason of veterans' preference shall be used the first time a qualified veteran is hired by any state agency and not for the purpose of promotions. (Ref. Section 65-506~~4~~, Idaho Code) ~~(3-16-04)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

103. DURATION OF ELIGIBILITY REGISTERS.

01. Reemployment Preference Registers. Eligible candidates will remain thereon for twelve (12) months from effective date of layoff. (Ref. Rules 101.01 and 144) (3-16-04)

02. Other Registers. The duration of all other registers will be determined by the administrator or delegate based on the frequency of job openings and agency need. ~~(3-16-04)~~(____)

104. REMOVAL OF NAMES.

01. Reasons Specified. Names may be removed from any eligibility register(s) by the administrator or delegate because of: ~~(3-16-04)~~(____)

a. Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. (3-16-04)

b. A statement by the eligible candidate that he or she is not willing to accept appointment under conditions previously specified. (3-16-04)

c. Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. (3-16-04)

d. Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. (3-16-04)

e. The eligible candidate's conduct renders him or her unsuitable for the position or classification for which he or she applied. (3-16-04)

f. Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator or delegate. ~~(3-30-01)~~(____)

g. Conviction of an eligible candidate of any felony. (3-30-01)

h. False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-30-01)

i. Dismissal of an eligible candidate from state service. (3-30-01)

j. Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (3-16-04)

k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he or she is not entitled. (3-16-04)

l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. (3-16-04)

m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same department and not been accepted for employment for good cause. (3-16-04)

n. Declining three (3) separate offers of employment or reemployment without good cause. (3-16-04)

02. Limitations and Duration of Removal. The administrator or delegate shall determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator or delegate. (3-16-04)(____)

~~**105. TEMPORARY UNAVAILABILITY NOT REASON FOR REMOVAL.**~~

~~Temporary unavailability of an eligible applicant, not to exceed fifteen (15) calendar days, in order that the employee may give his or her employer advance notice of separation is not proper cause for his or her removal from the register. (3-30-01)~~

1065. RESTORATION OF NAMES TO ELIGIBILITY REGISTERS.

Upon receiving appropriate evidence, the administrator or delegate shall restore the name of an eligible candidate to any eligibility register from which it has been removed for causes enumerated in Rule 104. (3-30-01)(____)

~~**1076. REVISION OF CLASSIFICATION SPECIFICATIONS.**~~

~~Whenever a classification specification is revised, the names of persons on the existing eligibility register who meet the minimum qualifications for the revised classification shall be placed in score order on the eligibility register for the revised classification. (3-16-04)~~

~~**107. -- 108. (RESERVED).**~~

109. CERTIFICATION AND SELECTION.

Whenever a vacancy in a classified position is to be filled by a competitive recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division of Human Resources' ~~staff~~ or delegate. Non-promotional internal or external transfers or reinstatements do not require certified registers certified by the Division of Human Resources. (3-16-04)(____)

110. NUMBER OF NAMES ON REGISTER.

The Division of Human Resources' ~~staff~~ or delegate shall certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority shall be able to select for appointment from among ten (10) eligible candidates successively for each position to be filled. If an appointment is to be made to one (1) position only, the top ten (10) available eligible candidates shall be certified. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority shall have ten (10) names to consider for each vacancy. The names of all eligible candidates with scores identical to the tenth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes. (3-16-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

112. SELECTIVE CERTIFICATION.

The administrator or delegate may authorize selective certification from a register where specific qualifications for a position are justified by an appointing authority in addition to the minimum qualifications for the classification. (3-16-04)(____)

~~**113. -- 118. (RESERVED).**~~

119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

~~01. Form. Appointing authorities shall notify the administrator of each appointment on the prescribed form. (2-6-92)~~

021. Reemployment Preference Register. New appointments to a classification within a department are not permissible if there is a departmental reemployment preference register (Rule 101.01) for that classification with names of eligibles who are willing to accept employment. (3-16-04)

032. Credited State Service. Except as provided by Rules 040 and 250.02, no classified credited state service shall accrue to employees for any service under temporary, project exempt, or nonclassified appointments. (7-1-87)

~~04. Probationary Period Required. All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification shall be probationary appointments except as otherwise provided in Rules 040, and 150. (3-16-04)~~

053. Provisional Appointment. (7-1-93)

a. A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code) (3-16-04)(____)

b. In nominating a person for provisional appointment, the appointing authority shall transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position shall not be permitted unless specifically authorized by the administrator. (3-16-04)

c. Provisional incumbents shall be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so shall be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-16-04)

120. LIMITED SERVICE APPOINTMENTS.

01. Designation. Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. (3-16-04)

02. Permanent Status and Expedited Layoff. Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Rule 140.03.c. (3-16-04)

~~03. Limited Service Agreement. Appointing authorities making limited service appointments shall prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and/or updated agreements are required every two (2) years. A copy of the agreement shall be submitted to the administrator. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

124. REINSTATEMENTS.

01. Eligibility. As determined by the administrator or delegate, a current or former employee shall be eligible for reinstatement to a classification in which he or she held permanent status, or if deleted its successor, or to

another classification of equal or lower pay grade under the following conditions (salary treatment is covered by Rule 072.05). (3-16-04)(____)

a. Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-30-01)

b. The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (3-16-04)

c. The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. (3-16-04)

02. Reinstatement Prohibited. Reinstatement of a current or former employee is not permissible as long as there is a departmental register (Rule 101.01) for that classification with names of eligibles who have reemployment preference status. (3-16-04)

03. Examination. The administrator or delegate may require a current or former employee to pass an examination for the classification to which reinstatement is desired. (3-16-04)(____)

04. Probationary Period. An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rules 124.05 and 145.01). (3-16-04)

05. Return from Military Duty. An employee returning from military leave without pay (Rule 250.05) who is relieved or discharged from military duty under conditions other than dishonorable shall be, upon application, reinstated in his or her former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, ~~65-508~~, 65-511 and 65-512, Idaho Code, and USERRA or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made ~~within ninety (90) calendar days after separation from military duty or from hospitalization continuing after discharge up to one (1) year~~ in accordance with the provisions of USERRA. Salary treatment is covered by Rule 072.08. (3-30-01)(____)

125. TRANSFERS.

01. Authority to Transfer. An appointing authority may transfer an employee at any time from one position to another in the same classification. (3-16-04)

02. Transfer Within Pay Grade. An appointing authority may transfer an employee from a classification in which he or she holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. (3-16-04)

~~**03. Probationary Period.** An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. Voluntary probation is not allowed for intradepartmental transfers. (Ref. Rule 150) (3-16-04)~~

~~**04. Limitation.** Transfers shall not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147. (7-1-87)~~

~~**05. Transfer Between Departments.** An employee shall be eligible for transfer between departments in the same classification in which he or she holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. Accrued vacation and sick leave shall be transferred in accordance with Rules 230.04 and 240.02. Salary treatment is covered by Rule 072.04. (3-16-04)~~

~~**06. Restriction.** Transfer of an employee between departments is not permissible as long as there is a departmental register with reemployment preference status (Rule 101.01) for the classification in the department to which transfer is desired with names of eligibles who are willing to accept reemployment. (3-16-04)~~

~~07. Examination. The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired. (3-16-04)~~

083. Involuntary Transfer. Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer. (Ref. Rules 010.39 and 200.01.a.). (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

129. ACTING APPOINTMENT TO A POSITION.

01. Conditions for Acting Appointment. At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his or her own department in an acting capacity whenever: (3-16-04)

a. The incumbent of the position in the higher classification is on authorized leave of absence; or (3-16-04)

b. A vacancy exists and there is no departmental register with reemployment preference status (Rule 101.01) with names of eligibles who are willing to accept reemployment, nor adequate departmental register for the classification. (3-16-04)

~~02. Minimum Qualifications. To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. (4-5-85)~~

~~03. Notification. Appointing authorities shall notify the administrator of each acting appointment no later than the effective date of the appointment unless an exception is specifically authorized by the administrator. (3-16-04)~~

042. Effective Date. The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted. (3-16-04)

130. LIMITATION ON LENGTH OF APPOINTMENT.

Acting appointments shall be limited to the period of time necessary to fill the vacancy ~~pursuant to procedures prescribed in these rules~~ but ~~in no case~~ shall not continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. (3-16-04)(____)

~~**131. SALARY.**~~

~~For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. (3-16-04)~~

~~**1321. EXPIRATION OF APPOINTMENT.**~~

~~**01. Return of Incumbent.** When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment shall expire. The acting appointee shall be returned to the class, the pay grade and rate held immediately preceding the acting appointment. (3-16-04)(____)~~

~~**02. Failure of Incumbent to Return.** Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 130. (3-16-04)~~

~~1332. -- 139. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

141. CALCULATION OF RETENTION POINTS.

There shall be an evaluation of all employees in the classification in the department or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations and classified credited state service. Qualified ~~war~~ veterans are given preference through additional retention points. (Ref. Rule 141.05), The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Overall Performance Level Documented As:	Retention Points Earned Per Hour of Credited State Service
Superior Exemplary or equivalent	.100
Very Good Solid Sustained or equivalent	.075
Satisfactory Achieves Performance Standards or equivalent	.050
Needs Improvement Does Not Achieve Performance Standards or equivalent	.0
Unsatisfactory	-0

(3-16-04)(____)

01. No Performance Evaluation on File for a Twelve-Month Period. All credited state service for which there is no performance evaluation shall receive seventy-five thousandths (.075) points per hour. A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation. (3-16-04)

a. Grace period. Supervisors have ninety (90) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that ninety (90) day time frame, the evaluation may be written to cover the two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation. (3-16-04)

b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution. (3-16-04)

02. Calculation of Retention Points Since Last Evaluation. The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points shall be calculated in conformance with Rule 141.01. (3-16-04)

03. Qualified ~~War~~ Veterans (~~War-Era~~) Preference. ~~War~~ Veterans (~~War-Era~~) as defined in Chapter 5, Title 65, Idaho Code, shall receive preference by the addition of retention points equivalent to three (3) years of ~~satisfactory~~ service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) (3-16-04)(____)

04. Calculation Date Cutoff. No points shall be calculated for the sixty (60) days prior to the effective date of the layoff. (3-16-04)

05. Audit of Retention Points. Each employee shall be entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor shall be binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected

parties.

(7-1-87)

(BREAK IN CONTINUITY OF SECTIONS)

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency That Conducted the Layoff. (3-16-04)

a. The employee who has been laid off, or ~~officially notified~~ given official written notice of a pending layoff date (Ref. Rule 143.05) shall be offered reemployment to a position in the classification from which laid off or layoff is pending, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that department or agency. Appointing authorities may reassign or transfer individuals who are in the same classification within their department but may not demote, promote, reclassify, or make acting appointments to that classification. If that department determines a need to fill that classification, the employee scheduled for lay off or who was laid off has first priority for that position. (Ref. Rule 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator.

~~(3-16-04)~~(____)

b. When attempting to fill vacancies for a classification where a lay off occurred, the department or agency shall provide an opportunity to interview and shall make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule 150.02 and those that took a voluntary demotion in lieu of layoff. (3-16-04)

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. If the pay minimum has increased, see Rule 072.04. (3-16-04)

02. Consideration for Hire by Other Agencies. For promotional opportunities, internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However, individuals who have been laid off must be offered the opportunity to interview before other agencies consider candidates from statewide promotional or open-competitive recruitments. (3-16-04)

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. (3-16-04)

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he or she may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve (12) month period if otherwise eligible. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Rule 040, every appointment and promotion to a classified position shall be probationary, or in the absence of adequate registers, provisional. (7-1-87)

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the department an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: (3-30-01)

a. Entrance probation is the probationary service required of an employee at the time of his or her original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which shall be one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who shall serve two thousand eighty (2,080) hours. (3-30-01)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which shall be one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who shall serve two thousand eighty (2,080) hours. (3-30-01)

c. Voluntary probation is ~~the probationary period negotiated~~ an agreement between the employees seeking and the hiring authority for inter-agency employment actions such as reinstatement, transfer, and/or voluntary demotion, and/or reinstatement and the hiring authority. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. ~~Voluntary probation agreements must be approved by the administrator and kept on file with the Division for the duration of the probationary period.~~ (3-16-04)(____)

03. Extension of Probationary Period. ~~Upon petition by a~~ An appointing authority that demonstrates good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Petitions must be received by the administrator before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) (3-16-04)(____)

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single department uninterrupted by resignation, termination (Ref. Rule 152.02) or dismissal (Ref. Rule 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (3-16-04)

05. Acting and Temporary Service Credit. Temporary and acting appointment service time in a given classification may be used toward fulfilling the entrance probationary requirements in that classification as established in Section 67-5309(j), Idaho Code. The temporary or acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code and Rules 122, 129, 150.01(a)). (____)

151. SATISFACTORY SERVICE.

When a probationary employee has satisfactorily served the probationary period, the appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division of Human Resources a performance evaluation indicating satisfactory performance and shall certify the employee to permanent status. ~~Such~~ Certification to permanent status shall be effective one thousand forty (1,040) hours of credited state service after appointment, except that it shall be effective two thousand eighty (2080) hours of credited state service after appointment for peace officer classifications unless either period has been extended pursuant to Rule 150.03. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (3-30-01)(____)

152. SEPARATION DURING PROBATION.

~~01. Notification.~~ If a probationary employee does not serve satisfactorily, the appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division of Human Resources a performance evaluation ~~indicating unsatisfactory performance.~~ (Ref. Section 67-5309(j), Idaho Code and Rule 210.04) (3-16-04)

~~02. During Entrance and Voluntary Probation.~~ (3-30-01)

~~a.~~ An employee who does not serve satisfactorily during the entrance or voluntary probation shall first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (Ref. Section 67-5309(j), Idaho Code and Rule 210.04) (3-16-04)(____)

~~b-~~ *Notice to the employee of termination for unsatisfactory service shall be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (7-1-87)*

(BREAK IN CONTINUITY OF SECTIONS)3

154. FAILURE TO PROVIDE PERFORMANCE EVALUATION.

If the appointing authority fails to provide a performance evaluation as required in Rule 151, the employee shall be considered to have satisfactorily completed the probationary period and shall be certified to permanent status as provided by Rule 151, unless the probationary period has been extended by the administrator or delegate. (Ref. Rule 150.03) (3-16-04)(____)

~~155. -- 158. (RESERVED).~~

~~159. STATUS AND TENURE.~~

~~01. Probationary Promotions. Employees serving a promotional probationary period shall have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. (Ref. Rules 151, 152.03, and 153) (3-16-04)~~

~~02. Tenure of Employment. All employment in the state classified service shall be without definite term except where the term may be specified by law, or under conditions of a limited service appointment. (Ref. Rule 120) (3-16-04)~~

~~16055. -- 168. (RESERVED).~~

169. PROMOTIONS.

01. Use of Promotional Registers. (7-1-93)

a. Preference for Promotion. Whenever practical, a vacancy in a classified position shall be filled by the promotion of an employee in the department in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (3-30-01)

b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Rule 101.03) or an open-competitive register (Rule 101.04) whenever he or she determines that such an appointment will best serve the interests of the department. (3-16-04)

c. Departmental Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is a departmental register with reemployment preference status (Rule 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (3-16-04)

02. Interdepartmental Promotions. All interdepartmental promotions shall be made using statewide promotional registers (Rule 101.03) (7-1-87)

03. Eligibility for Promotion. Promotional appointees must have permanent status (~~ref. Rule 159~~) and must meet the minimum qualifications of the promotional classification. (3-16-04)

~~170. -- 1789. (RESERVED).~~

~~179. DEMOTIONS.~~

~~Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~182. **DISCIPLINARY DEMOTION.**~~

~~An appointing authority may make a disciplinary demotion for causes enumerated in Rule 190 which are not sufficiently severe to warrant dismissal. (7-1-87)~~

~~183. -- 189. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

190. DISCIPLINARY ACTIONS.

01. Cause for Disciplinary Actions or Separation from State Service. Dismissal, suspension, demotion, or reduction in pay, may occur for any of the following causes during the employee's employment: (3-16-04)

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the department or the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

b. Inefficiency, incompetency, or negligence in performing duties or job performance that fails to meet established performance standards. (4-5-85)()

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. (Ref. Rule 010.56) (3-16-04)

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. (4-5-85)

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department. (4-5-85)

f. Intoxication on duty. (4-5-85)

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. (4-5-85)

h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. (4-5-85)

i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. (4-5-85)

j. Acceptance of gifts in exchange for influence or favors given in ~~an~~ the employee's official capacity. (4-5-85)()

k. Habitual pattern of failure to report for duty at the assigned time and place. (4-5-85)

l. Habitual improper use of sick leave. (4-5-85)

m. Unauthorized disclosure of confidential information from official records. (4-5-85)

n. Absence without leave. (4-5-85)

o. Misstatement or deception in application for employment. (4-5-85)

p. Failure to obtain or maintain a current license or certificate lawfully required as a condition in

performance of duties. (4-5-85)

q. Prohibited participation in political activities. (Ref. Section 67-5311, Idaho Code) (4-5-85)

02. Suspension for Investigation. An appointing authority may suspend with pay an employee for investigation of disciplinary causes enumerated above. Each suspension for investigation shall be superseded by reinstatement to duty, dismissal or disciplinary suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. (3-30-01)

03. Disciplinary Suspension. An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status shall be subject to appeal by the employee to the Commission. (3-16-04)

04. Suspension on Felony Charges. An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled shall be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. (7-1-87)

05. Notice to Administrator. Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he or she shall notify the employee and the administrator concurrently in writing; and shall set forth the specific rule(s) violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule 190.02) may be made without prior notice to the employee; in this case, the appointing authority shall notify the administrator as soon as practical. (7-1-87)

(BREAK IN CONTINUITY OF SECTIONS)

~~**203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.**~~

~~When the Division of Human Resources receives a complaint from a federal agency alleging violation of employment laws, the administrator shall take prompt action to investigate. If the complaint is department specific, the appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. (3-16-04)~~

~~2043. -- 209. (RESERVED).~~

210. PERFORMANCE EVALUATIONS.

01. Performance Evaluations. Each department shall adopt and maintain a system of employee performance evaluations provided it meets the basic objectives of the state's performance evaluation system as approved by the administrator. (3-30-01)

02. Approval of Form. The Division of Human Resources' staff shall make available a standard format for this purpose. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved by the administrator. (3-16-04)

~~**03. Purpose.** The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations shall be discussed with affected employee who shall be allowed opportunity to submit written comments regarding the evaluation contents. (3-16-04)~~

043. Use of Evaluations. Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as

the affirmative certification for merit increases and bonuses (Ref. Section 67-5309C(b)B(d), Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule 151). ~~Other uses of performance evaluations are optional with the appointing authority.~~ (3-30-01)(____)

054. Evaluation Schedule. All classified employees shall be evaluated after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each two thousand eighty (2,080) hours of credited state service thereafter. (Ref. Section 67-5309C(b)(ii)(h)(j), Idaho Code.) Part time employees shall be evaluated on an annual basis. (3-30-01)(____)

065. Retention of Evaluation. A copy of the performance evaluation shall be retained in departmental records, and a copy shall be furnished to the employee. ~~The performance rating shall be transmitted to the administrator. Agency records and supporting documentation are subject to review by the Division of Human Resources.~~ All performance evaluation documents shall be copied and forwarded with the employee when an interagency promotion, demotion or transfer occurs. (3-16-04)(____)

07. Supervisors' Requirements. ~~Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision.~~ (3-16-04)

211. -- 219. (RESERVED).

220. RECORDS.

01. Employee Service Records. (7-1-93)

~~a-~~ For each employee in classified service, the Division of Human Resources' ~~staff or delegate~~ shall maintain a service record which shall include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (3-16-04)(____)

~~b-~~ ~~Service records or a facsimile thereof for classified employees shall be maintained permanently by the administrator.~~ (3-30-01)

~~e-~~ ~~Any employee may at all reasonable times during business hours review his or her service record maintained in the Division of Human Resources or maintained in any department. Except for material used to screen and test for employment, all information maintained in an employee's service record shall be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code.~~ (3-30-01)

02. Administrative Records. The administrator shall permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (3-16-04)

~~03. Employee Personnel Action Documents.~~ ~~The appointing authority shall furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations.~~ (3-30-01)

043. Transfers, Reemployment and Promotions Between Departments. When an employee seeks a transfer, reemployment, or promotion between departments or agencies, the appointing authority of the hiring department or agency, or designee, shall be entitled to examine the employee's service record and current agencies performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (3-16-04)

221. -- 229. (RESERVED).

230. VACATION LEAVE.

01. Eligibility. ~~All classified employees regardless of status or whether full-time or part-time shall earn vacation leave and be eligible to take and be paid for unused vacation leave in accordance with Sections 67-5334, 67-5335, and 67-5337, Idaho Code.~~ (7-1-87)

~~02. **Rate of Accrual.** All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) shall be counted in determining leave accrual rate. (4-5-85)~~

031. Mutual Agreement. Vacation leave requested by the employee may be used only when approved by the department. The employee and the department shall mutually agree upon such time or times when vacation leave will least interfere with the efficient operation of the department taking into consideration the vacation preference of the employee. (7-1-87)

042. Interdepartmental Transfer. An employee who is transferred from one (1) state department to another department shall be credited with accrued vacation leave by the receiving department at the time of transfer. (3-30-01)

231. -- 239. (RESERVED).

240. SICK LEAVE.

~~01. **Eligibility.** Sick leave shall be earned in accordance with Section 67-5333, Idaho Code. Sick leave shall only be taken in pay periods subsequent to being earned. (3-30-01)~~

021. Interdepartmental Transfer. An employee who is transferred from one (1) state department to another shall be credited by the receiving department with the amount of sick leave accrued at the time of transfer. (3-30-01)

032. Reasons for Use. Sick leave shall only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, legal guardian, or the same relation by marriage. (3-16-04)(____)

~~04. **Medical, Dental, or Optical Appointments Leave (MDA).** Employees are allowed up to two (2) hours for each occasional appointment without charge to sick leave for personal or family member medical, dental or optical examination or treatment. Occasional appointments are those which are traditionally considered to be preventative, wellness related, or diagnostic. Ongoing treatment for physical or mental illness is not covered by MDA. Use of this benefit may be limited by the appointing authority on a case by case basis where frequency of use is impeding organizational effectiveness or misuse is suspected. If more than two (2) hours are needed for appointments additional time may be charged to sick leave. (Ref. Rule 250.13) (3-16-04)~~

~~05. **Serious Medical Conditions.** Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule 242) (3-30-01)~~

~~06. **Notification.** It is the responsibility of the employee to notify his or her supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. (4-5-85)~~

073. Donated Leave. Vacation leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5335(7)4, Idaho Code. Such transfers are to be made from employee to employee. Vacation leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. (3-16-04)(____)

084. Sick Leave Abuse. A predictable and reliable level of attendance is an essential function of almost all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Rule 190 and Section 67-5333, Idaho Code) (3-16-04)

241. WORKERS COMPENSATION AND DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee shall be given the choice of either: 1) leave of absence without pay while receiving workers compensation; or 2) utilizing a portion of accrued sick leave to supplement workers compensation to maintain his or her regular salary. No appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his or her rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (4-5-85)

02. Layoff After Six Months' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to return to work after ~~six (6) months'~~ twelve (12) weeks' absence or when accrued sick leave has been exhausted, whichever is longer, the employee's position shall be declared vacant unless prohibited by state or federal law or extended by the administrator. (Ref. Rule 101.01) The period of absence is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks. Return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence. (~~3-30-01~~)()

a. If an employee is not FMLA eligible, the employee may only take twelve (12) weeks' absence for disability every twelve (12) months. The employee's name shall be certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (~~3-16-04~~)()

b. Conditional releases will be considered in accordance with the Americans with Disabilities Act. (3-16-04)

~~242. FAMILY AND MEDICAL LEAVE.~~

~~**01. Applicability.** The provisions of the federal Family and Medical Leave Act (FMLA) shall apply without regard to the exclusion for worksites employing less than fifty (50) employees in a seventy five (75) mile area, and without the limitation on reinstatement of the highest paid employees. (Ref. 29 U.S.C. 2601 et seq.). The State is one (1) employer for the purposes of FMLA. For consistency, the administrator shall publish statewide guidance on FMLA policies. (3-16-04)~~

~~**02. Return to Work Release.** An appointing authority may request a return to work release if, due to the nature of the health condition and the job: (3-30-01)~~

~~**a.** Light or limited duty work or other accommodation is requested; or (3-16-04)~~

~~**b.** The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others. (7-1-94)~~

~~243. MATERNITY AND PATERNITY LEAVE.~~

~~**01. Use of Sick Leave.** Pregnancy, child birth or related medical conditions generally are considered temporary disabilities and shall be treated as such for sick leave purposes. Maternity and paternity leave shall be granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act. (3-16-04)~~

~~**02. Determination of Disability Period.** The employee's physician shall be considered the primary authority in determining the disability period insofar as compensable sick leave is concerned. (3-16-04)~~

~~**03. Additional Time Off.** Maternity and paternity leave preceding and following the time that the person is disabled shall be leave without pay unless the employee elects to use accrued vacation leave, earned administrative leave or compensatory time off for overtime. (3-16-04)~~

~~**04. Discrimination Prohibited.** Pregnancy discrimination is prohibited. The employee may continue to~~

work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-30-01)

~~05. Adoption and Foster Care. Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule 242)~~ (3-30-01)

2442. SEPARATION UPON FAILURE TO RETURN TO WORK.

Except for those employees on authorized leave or placed on a register with reemployment preference prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) working days after approved paid or unpaid leave or release by his or her physician shall be considered as having voluntarily separated. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement as provided under Rule 124. Written notification of his or her separation/resignation shall be mailed to the last known home address. Any objections by the employee to the notice, must be received within five (5) working days of receipt of the notice, or acceptance of the separation/resignation will be presumed. If objections are received within the timeline, a disciplinary separation (dismissal) or other formal disciplinary action may be pursued as provided in Rule 190. (3-16-04)

2453. -- 249. (RESERVED).

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the department. The request for leave must be in writing and must establish reasonable justification for approval. (3-16-04)

~~**b.** Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications.~~ (7-1-87)

eb. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, earned administrative leave or compensatory time off for overtime before commencing leave without pay. (Ref. Rule 240) (3-16-04)

~~**d.** Resignation. If vacation leave, earned administrative leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he or she shall be paid for such accruals in accordance with Sections 67-5337 and 67-5329(3), Idaho Code.~~ (7-1-87)

02. Leave of Absence to Assume a Nonclassified Position. (7-1-93)

a. Approval. An appointing authority may approve a leave of absence from classified service to a classified employee to assume a nonclassified position. Such leave of absence shall not extend beyond the time the employee would be eligible for reinstatement to classified service or ninety (90) days past the service of the appointing authority, whichever comes first. (Ref. Rule 124.01.a.) (3-16-04)

~~**b.** Credited State Service. An employee on leave of absence to assume a nonclassified position continues to accrue credited state service.~~ (3-16-04)

b. Compensatory time will not accrue but can continue to be used if assuming an "executive" position. ()

~~**03. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types shall be used to the extent necessary to avoid leave without pay: accrued compensatory time; earned administrative leave; vacation. If abuse of sick leave is suspected see Rule 240.08.**~~ (3-16-04)

043. Military Leave With Pay. Employees who are members of the national guard or reservists in the armed forces of the United States ~~who are directed by proper military authority to participate in ordered and authorized field training under the National Defense Act shall receive military leave with pay for a maximum fifteen (15) working days in any one (1) calendar year~~ engaged in federal military duty ordered or authorized under the provisions of law, shall be entitled each calendar year to fifteen (15) days of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is ~~exclusive of separate from~~ vacation, ~~and~~ sick leave, ~~and~~ holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (4-5-85)(10-18-06)T

054. Military Leave Without Pay. ()

a. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his or her position either voluntarily or involuntarily ~~in order~~ to perform active military duty, has reemployment rights as defined in Rule 124.05. ~~The employee shall either be separated from state service or placed in "inactive" status, at the option of the appointing authority.~~ (3-16-04)()

b. Health Insurance for National Guard or Reservist Deployment. All employees who are members of the national guard or reservists in the armed forces of the United States shall be entitled to their existing medical benefits for the first thirty (30) days of a deployment ordered or authorized under the provisions of the National Defense Act. Use of vacation, EAL or compensatory time leave shall not be required for an employee to receive this health insurance benefit. (Ref. Section 46-225, Idaho Code and USERRA). ()

065. Administrative Leave with Pay. At the discretion of the appointing authority, an employee may be granted administrative leave with pay when such leave is in the best interest of the department. (4-5-85)

07. Earned Administrative Leave. (7-1-93)

a. ~~Authority for Use. In any week that an employee would be compensated an amount greater than forty (40) hours times the employee's regular rate of pay, an appointing authority may allow the employee to accumulate earned administrative leave to the extent necessary to reduce the cash compensation to forty (40) hours. An appointing authority may allow a part-time employee to accumulate earned administrative leave for the hours worked between the regularly scheduled hours and forty (40) hours. Earned administrative leave shall be calculated based on one hundred sixty (160) hours for police, correctional officers, and fire employees pursuant to Rule 073.02.~~ (3-30-01)

b. ~~Ineligible Employees. Employees who are ineligible for cash compensation and compensatory time for overtime work are ineligible for earned administrative leave. (Ref. Section 67-5329(1), Idaho Code).~~ (12-10-90)

c. ~~Payment and Credited State Service. Earned administrative leave (EAL) balances shall be paid upon transfer or separation. Hours of EAL shall accrue credited state service when worked.~~ (3-30-01)

086. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he or she shall not be considered absent from duty. The employee shall not be entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee shall be reimbursed by his or her respective department in accordance with department travel regulations. (3-16-04)

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee shall be permitted to attend. The employee may use accrued leave or leave without pay. (3-30-01)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he or she shall be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee shall be entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses

in connection with this duty are not subject to reimbursement by the state. (7-1-87)

~~d. Problem solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by a departmental problem solving or due process procedure or to appear as a witness or representative during such a proceeding shall be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (7-1-98)~~

~~e. Notification. An employee summoned for court and jury service or requested to serve as a grievance panelist, witness, or representative shall notify his or her supervisor as soon as possible to obtain authorization for leave of absence. (7-1-87)~~

~~09. Election Leave. When requested by an employee, an appointing authority shall grant leave with pay, without charge to vacation leave or compensatory time off for overtime, for voting in primary, general, municipal, school, or special elections in those instances where the employee's work would interfere with his or her being able to vote. (4-5-85)~~

~~10. Religious Leave. Appointing authorities shall make reasonable accommodations to an employee's need for leave for religious observances. Such leave shall be charged to the employee's accrued vacation leave or compensatory time off for overtime. (4-5-85)~~

~~11. Leave During Facility Closure or Inaccessibility. (7-1-93)~~

~~a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees shall be authorized administrative leave with pay (Ref. Rule 250.06) to cover their scheduled hours of work during the closure or inaccessibility. (4-5-85)~~

~~b. Compensation for extra hours worked. An employee who works at a state facility during declared closure or inaccessibility shall be, in addition to regular salary, granted time off equal to the number of hours worked. If overtime is involved, it shall be compensated as provided by Section 67-53298, Idaho Code. (4-5-85)()~~

~~c. Early release. When the appointing authority or designated representative authorizes early release of employees pursuant to Rule 250.11.a., the resulting time off shall be charged to administrative leave with pay. (Ref. Rule 250.06) (3-16-04)~~

~~1207. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers shall be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. Such relief services must be in Idaho or a state bordering Idaho. (3-30-01)()~~

~~1308. Employee Assistance Program Leave. Up to two (2) hours per visit shall be granted for utilization of the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program. EAP leave shall be coded as MDA EAP. (Ref. Rule 240.04). (3-30-01)()~~

~~251. -- 2598. (RESERVED).~~

259. COMPENSABLE HOURS.

01. Biweekly Employees. With the exception of holiday leave, no leave may be used if it will result in pay in excess of the employee's regularly scheduled work week. ()

02. Ineligible Employees. Employees who are "executive" as defined by Section 67-5302(12), Idaho Code, are ineligible to earn or receive payment for hours worked or accrued beyond their regularly scheduled work week. ()

260. OVERTIME.

01. Employing Agencies. The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) department, the department(s) employing the employee when the overtime occurs shall be liable for compensatory time off or cash compensation as provided by law. (7-1-87)

02. Compensation for Overtime. Overtime accrual and compensation for classified employees is covered by Sections 67-53298 ~~and 67-5330~~, Idaho Code, and Section 59-1607 for nonclassified employees. Overtime is defined in Section 67-5302(~~1920~~), Idaho Code. (7-1-87)(____)

03. Forfeiture of Compensatory Time. Employees who become executives within their current agency as set forth by Idaho Code Section 67-5302(12) shall have six (6) months from the date of appointment to use any compensatory time balance. After six (6) months, any remaining compensatory time will be forfeited. Separation or transfer will continue to result in forfeiture of compensatory time. (____)

034. Modification of Workweek or Schedule. No department shall alter a previously established work week for the purpose of avoiding overtime compensation. A department may modify the employee's regular schedule of work to avoid or minimize overtime. (7-1-87)

(BREAK IN CONTINUITY OF SECTIONS)

272. POLICY MAKING AUTHORITY.

To address the need for all classified employees to be treated equally fairly, and in situations where the State may be considered as one (1) employer, the Division of Human Resources Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. (3-16-04)(____)

~~273. MINIMUM HUMAN RESOURCE POLICIES.~~

~~In order to ensure consistent minimum standards for employee rights and responsibilities under federal law, Idaho Code, and executive orders, each agency is required to have policies on the following, and take steps needed to inform employees of their rights and responsibilities under those same policies. If an appointing authority does not provide employees with the agency specific policy, a model policy issued by Division of Human Resources will apply.~~ (3-16-04)

- ~~01. Problem Solving. (Ref. Rule 200) (3-16-04)~~
- ~~02. Due Process. (Ref. Rule 200.01.a.) (3-16-04)~~
- ~~03. Compensation, Including Overtime and Compensatory Time. (Ref. Rule 073.06) (3-16-04)~~
- ~~04. Reasonable Accommodations/ADA. (Ref. Rule 021) (3-16-04)~~
- ~~05. Sexual Harassment and Other Illegal Discrimination. (Ref. Rule 021) (3-16-04)~~
- ~~06. Conflict of Interest — Nepotism. (Ref. Rule 024 and 025) (3-16-04)~~
- ~~07. Drugfree Workplace. (Ref. Rule 190.01.f.) (3-16-04)~~

2743. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.08 - VITAL STATISTICS RULES

DOCKET NO. 16-0208-0701

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 and 39-5403, Idaho Code, and Senate Bill 1069 (2007) which modified Sections 39-260 and 39-268, 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 17, 2007.

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 many areas of Idaho, physicians are not always available to sign death and stillbirth certificates. To respond to this need, the Department submitted a change to statute in the 2007 legislative session to add advanced practice professional nurses and physician assistants to the list of those legally authorized to sign death and stillbirth certificates and authorize the final disposition and removal of a dead body or stillborn fetus. This change to statute was passed as Senate Bill 1069 (2007) which modified Sections 39-260 and 39-268, Idaho Code.

This rulemaking amends the vital statistics rules to align them with the changes in statute made under SB 1069. In addition, a reference to the official form required for updating a death certificate was added to clarify the requirement.

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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done simply to align the rules with SB 1069 passed during the 2007 legislative session.

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 24, 2007.

DATED this 20th day of August, 2007.

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 OF DOCKET NO. 16-0208-0701

450. REGISTRATION OF DEATHS AND STILLBIRTHS.

01. Acceptance of Incomplete Death Certificate. If all the information necessary to complete a death certificate is not available within ~~the time prescribed for filing the certificate~~ five (5) days after the date the death occurred, the person in charge of interment or removal of the body from the district shall in which the death occurred must file the certificate as prescribed by the State Registrar with all information that is available, provided that the medical certification of the cause of death has been signed by the ~~physician or coroner~~ person responsible for such certification. If the cause of death is unknown or undetermined, the cause of death shall must be shown as unknown or undetermined on the certificate. The ~~physician or coroner~~ person responsible for the medical certification shall of the cause of death must also sign the authorization for final disposition of the body. If the body is to be cremated, the coroner must also give additional authorization. (12-26-83)(____)

a. A supplemental report providing the cause of death information missing from the original certificate shall must be filed by the ~~certifying physician or coroner~~ person responsible for medical certification of the cause of death with the State Registrar within fifteen (15) days of the filing of the death certificate on a form provided or approved by the State Registrar. (12-26-83)(____)

b. A supplemental report providing all other information missing from the original certificate shall must be filed with the State Registrar by the person responsible for filing the certificate within thirty (30) days of the date the death occurred or as otherwise authorized by the State Registrar on a form provided or approved by the State Registrar. (12-26-83)(____)

c. The State Registrar will make the information on the supplemental report(s) shall be made a part of the existing death certificate and will file the supplemental report(s) shall be filed with the death certificate. The State Registrar will also mark the death certificate shall be marked to show that supplemental information was added. (12-26-83)(____)

02. Signatures Required on Death Certificates. (12-26-83)

a. The mortician, or person acting as such, shall must sign the death certificate. No stamps or other types of facsimile signatures may be used. (12-26-83)(____)

b. The responsible ~~physician or coroner~~ person must sign the medical certification of the cause of death. Failure to do so will invalidate the record as a legal document. No stamps or other types of facsimile signatures may be used. (12-26-83)(____)

c. The local registrar must sign the certificate. The registrar's signature must be the same as it appears in the notarized certificate of appointment. No stamps or other types of facsimile signatures may be used. (12-26-83)

03. Signatures Required on Stillbirth Certificates. (12-26-83)

a. The mortician's signature must meet the following criteria: (12-26-83)

i. The mortician, or person acting as such, shall must sign the certificate. No stamps or other types of facsimile signatures may be used. (12-26-83)(____)

ii. When a hospital disposes of a stillborn fetus, in accordance with Section 39-268(e~~3~~), Idaho Code, the hospital authority shall must complete and sign the certificate as mortician. (12-26-83)(____)

b. The person responsible according to Section 39-260, Idaho Code, for the attendant or medical certification, must sign the certificate. No stamps or other types of facsimile signatures may be used. (12-26-83)

c. The local registrar must sign the certificate. The registrar's signature must be the same as it appears in the notarized certificate of appointment. No stamps or other types of facsimile signatures may be used. (12-26-83)

(BREAK IN CONTINUITY OF SECTIONS)

850. REMOVAL OF DEAD BODY OR FETUS FROM PLACE OF DEATH OR STILLBIRTH.

Before removing a dead body or fetus from the place of death or stillbirth, the funeral director, or person acting as such, ~~shall obtain assurance from the attending physician or the physician's designate that the death or stillbirth is from natural causes and that the physician or the physician's designate will assume responsibility for certification of the cause of death or stillbirth, and receive from the attending physician or the physician's designate permission to remove the dead body or fetus from the place of death or stillbirth, or shall notify the coroner if the case comes within the jurisdiction of the coroner and obtain authorization to remove the dead body or fetus. In addition, the coroner may authorize removal of the dead body or fetus when death or stillbirth is due to natural causes only when there was no attending physician during the last illness, or there was no physician in attendance at the stillbirth, or when the attending physician or the physician's designate is not available or is physically incapable of providing the assurance or permission.~~ must, in accordance with Section 39-268, Idaho Code: ~~(12-26-83)~~()

01. Obtain Assurance That Death Is from Natural Causes. Obtain assurance from the attending physician, physician assistant, advanced practice professional nurse responsible for medical certification of the cause of death, or his designate, that the death or stillbirth is from natural causes and that the attending will assume responsibility for certification of the cause of death or stillbirth; or ()

02. Notify the Coroner. Notify the coroner when: ()

a. The case falls within the jurisdiction of the coroner in accordance with Section 39-260, Idaho Code; or ()

b. The death or stillbirth is due to natural causes; and ()

i. There was no attending physician, physician assistant, or advanced practice professional nurse during the last illness; or ()

ii. There was no physician, physician assistant, or advanced practice professional nurse in attendance at the stillbirth; or ()

iii. When the attending physician, physician assistant, advanced practice professional nurse, or his designate, is not available or is physically incapable of providing assurance that the death or stillbirth is from natural causes or providing permission to remove the dead body or fetus from the place of death or stillbirth. ()

03. Receive Permission to Remove the Dead Body or Fetus. Receive permission to remove the dead body or fetus from the place of death or stillbirth from: ()

a. The attending physician, physician assistant, advanced practice professional nurse, or his designate, if the death is from natural causes and all assurances in Subsection 850.01 of this rule have been met; or ()

b. The coroner, if the case falls within the jurisdiction of the coroner, in accordance with Section 39-260, Idaho Code, or if the death or stillbirth is due to natural causes and one (1) of the conditions listed in Subsections 850.02.b.i. through 850.02.b.iii. of this rule has been met. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-0701

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 39-4801, 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 17, 2007.

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 protect school children from the spread of certain diseases, the Department requires that children be immunized before they enter school. The current rule detailing immunization requirements for school children does not specify that the 5th dose of diphtheria, tetanus and pertussis (DTaP) and the 2nd dose of measles, mumps and rubella (MMR) are only for children entering kindergarten during or after the 2005-2006 school year as originally intended. The rule is being amended to make this update.

The rule is also being re-ordered to place the exemptions in closer proximity to the immunization requirements for ease of use. The pertussis requirement is being separated from the diphtheria and tetanus requirement due to the current vaccine formulations which sometimes do not include pertussis. The definitions are also being amended for clarity.

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.

This rulemaking has no anticipated fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rules are being amended for clarity only.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dieuwke Spencer at (208) 334-5930.

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 24, 2007.

DATED this 20th day of August, 2007.

Sherri Kovach
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THE FOLLOWING IS THE TEXT FOR DOCKET 16-0215-0701

010. DEFINITIONS.

01. **ACIP.** The Center for Disease Control's Advisory Committee on Immunization Practices. (4-6-05)
02. **Admission.** ~~Enrollment of a child who is admitted for the first time at the commencement of or during the regular school term.~~ Admission to a public, private or parochial school is: (4-6-05)(____)
- a.** Registration of a child before attendance; or (____)
- b.** Re-entry of a child after withdrawing from previous enrollment. (____)
03. **Child.** A minor who is enrolled in kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. (3-30-07)
04. **Department.** Idaho Department of Health and Welfare. (10-13-92)
05. **Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test, and the results. Tests performed must meet the requirements of IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." (4-6-05)
06. **Parent, Custodian or Guardian.** The legal parent, custodian or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (4-6-05)
07. **Pertussis.** An infectious agent, Bordetella pertussis, that causes the disease commonly known as whooping cough. (4-6-05)
08. **Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States. (4-6-05)
09. **Physician's Representative.** Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)
10. **Private or Parochial School.** Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (1-25-79)
11. **Public School.** Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)
12. **School Authority.** An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school. (8-15-79)

011. -- 099. (RESERVED).

100. IMMUNIZATION PROGRAM.

All immunizations listed in Subsections 100.01 through 100.04 of ~~these~~ this rules, are required of children upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Immunizations ~~will be recognized if~~ must be administered according to the "General Recommendations on Immunizations" established by the ACIP or their equivalent. These recommendations are available from the Department as provided

in Section 004 of these rules. Exemptions from these immunization requirements are provided in Section 110 of these rules. (3-30-07)(____)

01. Measles, Mumps and Rubella (MMR). (____)

a. A child born after September 1, 1999, is required to have any combination of two (2) doses of Measles, Mumps and Rubella (MMR) or Measles, Mumps, Rubella and Varicella (MMRV) the vaccines administered to the child according to ACIP recommendations for children on or after the beginning of the 2005 school term listed in Subsections 100.01.c. and 100.01.d. of this rule. (3-30-07)(____)

b. A child born on or before September 1, 1999, is required to have one (1) dose of either of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule. (____)

c. Measles, Mumps, and Rubella (MMR); and (____)

d. Measles, Mumps, Rubella and Varicella (MMRV). (____)

02. Diphtheria, and Tetanus, ~~and Pertussis.~~ (____)

a. A child born after September 1, 1999, is required to have any combination of five (5) doses of the following vaccines for Diphtheria, Tetanus, and Pertussis administered to the child according to ACIP recommendations on or after the beginning of the 2005 school term, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements listed in Subsections 100.02.c. through 100.02.g. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed. The approved combinations are: (3-30-07)(____)

b. A child born on or before September 1, 1999, is required to have any combination of four (4) doses, of the vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule. (____)

a.c. Diphtheria, Tetanus, and acellular Pertussis (DTaP - Pediatric); (3-30-07)

b.d. Diphtheria, Tetanus and Pertussis (DTP); (3-30-07)

e.g. Tetanus, Diphtheria and acellular Pertussis (Tdap - Adolescent); (3-30-07)

d.f. Diphtheria, Tetanus (DT - Pediatric); and (3-30-07)

e.g. Tetanus, Diphtheria (Td - Adolescent). (3-30-07)

03. Pertussis. (____)

a. A child born after September 1, 1999, is required to have any combination of five (5) doses of the vaccines listed in Subsections 100.03.c. through 100.03.e. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed. (____)

b. A child born on or before September 1, 1999, is required to have any combination of four (4) doses of the vaccines listed in Subsection 100.03.c. through 100.03.e. of this rule. (____)

c. Diphtheria, Tetanus, and acellular Pertussis (DTaP - Pediatric); (____)

d. Diphtheria, Tetanus and Pertussis (DTP); and (____)

e. Tetanus, Diphtheria and acellular Pertussis (Tdap - Adolescent). (____)

034. Polio. A child is required to have three (3) doses of Polio vaccine, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements. (3-30-07)(____)

045. Hepatitis B. A child born after November 22, 1991, is required to have ~~three~~ (3) doses of Hepatitis B vaccine ~~administered to children born after November 22, 1991, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements.~~ (3-30-07)()

06. Summary of Immunization Requirements. ()

TABLE 100.06 SUMMARY OF IMMUNIZATION REQUIREMENTS		
Immunization Requirement*	Child born after September 1, 1999	Child born on or before September 1, 1999
Measles, Mumps, and Rubella (MMR)	2 doses	1 dose
Diphtheria, Tetanus	5 doses	4 doses
Pertussis	5 doses	4 doses
Polio	3 doses	3 doses
Hepatitis B	3 doses	3 doses**

* Exemptions for immunization requirements are found in Section 110 of these rules.
** Hepatitis B - Three (3) doses unless child was born on or before November 22, 1991. ()

(BREAK IN CONTINUITY OF SECTIONS)

150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.

01. Noncompliance. Any child not in compliance with this chapter upon admission to any Idaho public, private or parochial school, will be denied attendance by school authorities, unless the child is exempt from these immunization requirements as provided in Section 110 of these rules. (3-30-07)()

02. Length of Exclusion. Any child denied attendance in accordance with Subsection 150.01 of ~~these~~ this rules, will not be allowed to attend any Idaho public, private or parochial school until ~~they are~~ the child is in compliance with the requirements of this chapter. (4-6-05)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0702

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are July 13, 2007, and October 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, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code; 42 CFR, Part 435, 436, 440, 441, 457 and 483.

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 17, 2007.

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:

There are three rule changes in this docket as follows:

1. Changes will be made in order to clarify the types of acceptable documentation for citizenship and identity requirements in the Deficit Reduction Act of 2005. (eff. 7/13/07)
2. Idaho's Medicaid rules need to be aligned with federal regulations regarding the effective dates for requesting continued benefits pending a fair hearing decision. When a participant disagrees with an eligibility decision, he has a right to request continued benefits pending the fair hearing. Per federal regulations, the participant has until the effective date of the action taken on their case to request continued benefits. Currently, Idaho rule allows continued benefits when a request is made within ten (10) days of the mailing of the notice of decision. Aligning Idaho's rules may give the participant additional time to request continued benefits. (eff. 10/1/07)
3. A portion of the Federal requirements for Transitional Medicaid reporting were taken out of rule in error last year during the Medicaid Reform rewrite. Idaho rules must be updated to include the Transitional Medicaid reporting time lines and requirements for continuing Transitional Medicaid. (eff. 10/1/07)

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 being done to meet federal regulations and the rules confer a benefit to the participants.

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 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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to comply with federal regulation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Linda Palmer at (208) 334-5845.

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 24, 2007.

DATED this 21st day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0301-0702

100. PARTICIPANT RIGHTS.

The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of the following rights during the application process and eligibility reviews: (3-30-07)

01. Right to Apply. Any person has the right to apply for Health Care Assistance programs. Applications must be in writing on forms provided by the Department. (3-30-07)

02. Right to Hearing. Any participant can request a hearing to contest a Department decision in accordance with IDAPA 16.05.03. "Contested Case Proceedings and Declaratory Rules." (3-30-07)

03. Right to Request Reinstatement of Benefits. Any participant has the right to request reinstatement of benefits until a hearing decision is made if the request for the ~~hearing and for the~~ reinstatement ~~are~~ is made ~~within ten (10) days of the mailing of the notice of action~~ before the effective date of the action taken on the notice of decision. ~~(3-30-07)~~(10-1-07)T

04. Civil Rights. Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 contained in Title 29 of the U.S. Code, and all other relevant parts of federal and state laws. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

222. LEVELS OF CITIZENSHIP DOCUMENTATION.

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
- b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 222.01 is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)

- i. United States fifty (50) states; (3-30-07)
- ii. District of Columbia; (3-30-07)
- iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
- iv. Guam, on or after April 10, 1899; (3-30-07)
- v. U.S. Virgin Islands, on or after January 17, 1917, (3-30-07)
- vi. America Samoa; (3-30-07)
- vii. Swain's Island; or (3-30-07)
- viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c. A report of birth abroad of a U.S. Citizen, Form FS 240; (3-30-07)
- d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e. A Northern Mariana Identification Card, Form I-873; (3-30-07)
- f. An American Indian Card issued by the Department of Homeland Security with the classification code "KIC," Form I-873; (3-30-07)
- g. A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
- h. Evidence of U.S. Civil Service employment before June 1, 1976; ~~or~~ ~~(3-30-07)~~(7-13-07)T
- i. An official U.S. Military record showing a U.S. place of birth; ~~or~~ ~~(3-30-07)~~(7-13-07)T
- j. Certification of birth abroad, Form FS-545; (7-13-07)T
- k. Verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (7-13-07)T
- l. Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (7-13-07)T

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

a. A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; or (3-30-07)

b. Life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth. (3-30-07)

c. Religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing whether the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization. (7-13-07)T

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 105.01 through 105.03 of these rules do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

- a. Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b. One (1) of the following documents that shows a U.S. place of birth for participants sixteen (16) years of age or older and was created at least five (5) years before the application for Medicaid. For children under sixteen (16) years of age, the document must have been created near the time of birth; ~~(3-30-07)~~(7-13-07)T
 - i. Seneca Indian tribal census record; (3-30-07)
 - ii. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
 - iii. U.S. State vital Statistics official notification of birth registration; (3-30-07)
 - iv. ~~An amended~~ delayed U.S. public birth record that is ~~amended~~ recorded more than five (5) years after the person's birth; ~~(3-30-07)~~(7-13-07)T
 - v. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
 - vi. Medical (clinic, doctor, or hospital) record; (3-30-07)
 - vii. Institutional admission papers from a nursing facility, skilled care facility or other institution; or (3-30-07)
 - viii. Bureau of Indian Affairs roll of Alaska Natives. (7-13-07)T
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: ~~(3-30-07)~~(7-13-07)T
 - i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
 - ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
 - iii. ~~Neither of the two (2) persons making the declaration can be an applicant or recipient of Medicaid;~~ ~~(3-30-07)~~
 - iv. The persons making the declaration must provide proof of their own U.S. citizenship and identity; (3-30-07)
and
 - v. ~~The persons making the declaration must provide an explanation as to why documentation for the individual does not exist or cannot be obtained.~~ ~~(3-30-07)~~
 - vi. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsections 222.01 through 222.04 of this rule to establish both citizenship and identity. (3-30-07)

- a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)
- b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 222.05.a of this rule; (3-30-07)
- c. School identification card with a photograph of the individual; (3-30-07)
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast Guard Merchant Mariner card; (3-30-07)
- g. Certificate of Degree of Indian blood; or (3-30-07)
- h. Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual. (3-30-07)
- i. Identity affidavits are acceptable proof of identity for individuals living in a residential care facility. (7-13-07)T

(BREAK IN CONTINUITY OF SECTIONS)

421. TRANSITIONAL MEDICAID.

Participants are eligible for twelve (12) continuous months of Transitional Medicaid if the family income exceeds limits because of a reason listed in Subsections 421.01 through 421.02 of this rule. The participants must have received AFDC-related Medicaid in Idaho in three (3) of the six (6) months before the month they became ineligible unless the family income exceeds limits because they have Idaho TAFI income and income from employment. Individuals and families who were eligible for Title XIX Medicaid coverage under the AFDC-related coverage groups are eligible for Transitional Medicaid if the family income exceeds limits because of a reason listed in Subsections 421.01 through 421.03 of this rule. The family must have received AFDC-related Medicaid in Idaho in three (3) of the six (6) months before the month they became ineligible unless the family meets the condition in Subsection 421.01 of this rule. Eligible families may receive Transitional Medicaid for up to twelve (12) months. (3-30-07)(10-1-07)T

01. ~~Employment Income Increased.~~ Family income exceeds limits because employment income increased. Idaho TAFI Income and Income from Employment. Family income exceeds limits because they have Idaho TAFI income and income from employment. (3-30-07)(10-1-07)T

02. ~~Disregard Expired.~~ Family income exceeds limits because the thirty dollar (\$30) plus one-third (1/3) or the thirty dollar (\$30) disregard expired. Employment Income Increased. Family income exceeds limits because employment income increased. (3-30-07)(10-1-07)T

03. ~~Disregard Expired.~~ Family income exceeds limits because the thirty dollar (\$30) plus one-third (1/3) or the thirty dollar (\$30) disregard expired. (10-1-07)T

422. TRANSITIONAL MEDICAID NOTICE REQUIREMENTS.

The participant must be provided notice during Transitional Medicaid as described in Subsections 422.01 and 422.02. (10-1-07)T

01. Required Notice During First Six Months of Transitional Medicaid. The Department will notify the participant of the reporting requirements and the option for months seven (7) through twelve (12) of Transitional Medicaid. The Department will send the notice and the report form in month three (3) and month six (6)

of Transitional Medicaid. (10-1-07)T

02. Required Notice During Second Six Months of Transitional Medicaid. The Department will notify the participant of reporting requirements. The Department will send the notice and the report form in month nine (9) of TM. (10-1-07)T

423. TRANSITIONAL MEDICAID REPORTING REQUIREMENT.

Families receiving Transitional Medicaid are mailed three (3) report forms during the twelve (12) Transitional Medicaid months. Families must complete and return the reports as listed in Subsections 423.01 through 423.03. (10-1-07)T

01. First Report. The family must complete and return the report only if changes have occurred in earnings, household composition or work-related child care costs. The first report is due by day twenty-one (21) of TM month four (4). The report covers TM months one (1) through three (3). (10-1-07)T

02. Second Report. The family must complete and return the report only if changes have occurred in earnings, household composition or work-related child care costs. The second report is due by day twenty-one (21) of TM month seven (7). The report covers TM months four (4) through six (6). (10-1-07)T

03. Third Report. The family must complete and return the report only if changes have occurred in earnings, household composition or work-related child care costs. The third report is due by day twenty-one (21) of Transitional Medicaid month ten (10). The report covers Transitional Medicaid months seven (7) through nine (9). (10-1-07)T

424. INCOME TESTS FOR TRANSITIONAL MEDICAID.

When a family reports changes in earnings, household composition or child care costs, eligibility to receive months seven (7) through twelve (12) of Transitional Medicaid must be evaluated using the income tests listed in Section 424. Use the steps in Table 424.01 for the first income test, done at the end of month seven (7) of Transitional Medicaid. Use steps in Table 424.02 for the second income test, done at the end of month ten (10) of Transitional Medicaid. (10-1-07)T

01. First Transitional Medicaid Income, Test Done at the End of Month Seven.

TABLE 424.01 - FIRST TRANSITIONAL MEDICAID INCOME TEST. DONE AT THE END OF MONTH SEVEN (7)	
STEP	ACTION
Step 1.	Add the gross monthly earnings from months four (4) through six (6) of Transitional Medicaid.
Step 2.	Subtract allowable child care costs from months four (4) through six (6) of Transitional Medicaid from the total gross earnings. Allowable child care costs are costs necessary for the employment of the caretaker relative, not paid by another party.
Step 3.	Divide the result of the computation in Step 2 by three (3). The result is the average monthly earnings.
Step 4.	Select the Federal Poverty Guideline amount for the family size and multiply that amount by one hundred eighty-five percent (185%).
Step 5.	Compare the average monthly earnings from Step 3 with the product of Step 4. If the average monthly earnings in Step 3 exceed the amount computed in Step 4, close Transitional Medicaid. Adequate notice is required.

(10-1-07)T

02. Second Transitional Medicaid Income Test, Done at the End of Month Ten.

TABLE 424.02 - SECOND TRANSITIONAL MEDICAID INCOME TEST. DONE AT THE END OF MONTH TEN (10)	
STEP	ACTION
Step 1.	If the caretaker relative reports earnings in each of months seven (7) through nine (9) Transitional Medicaid eligibility continues. If no earnings go to Step 2.
Step 2.	If no earnings are reported for any of months seven (7) through nine (9) of Transitional Medicaid, determine if the caretaker relative has good cause for the lack of earnings. Use the criteria in Subsection 419.03. If good cause does not exist, close Transitional Medicaid. Ten (10) day advance notice is required.

(10-1-07)T

- 03. Good Cause for Lack of Earnings.** Good cause for lack of earnings includes, but is not limited to:
- a.** Family crisis. (10-1-07)T
 - b.** Court required appearance or incarceration. (10-1-07)T
 - c.** Loss of transportation where no other means of transportation is readily accessible. (10-1-07)T
 - d.** Loss of child care arrangements. (10-1-07)T
 - e.** Involuntary loss of employment. (10-1-07)T
 - f.** Illness. (10-1-07)T

4225. REASONS TO END TRANSITIONAL MEDICAID BEFORE THE END OF THE ELIGIBILITY PERIOD.

Reasons to end Transitional Medicaid are: (3-30-07)

- 01. Child Leaves Family Unit.** The family unit no longer includes an eligible child. (3-30-07)
- 02. Not Residing in Idaho.** The family unit no longer resides in Idaho. (3-30-07)
- 03. Failure to Cooperate.** The caretaker relative fails to cooperate in obtaining medical support and third party payments. In this case, the caretaker relative is ineligible. (3-30-07)
- 04. Member Committed Fraudulent Acts.** It is determined a member of the family unit committed fraud during the last six (6) months the family received Medicaid, before getting Transitional Medicaid. The remaining members of the family unit remain eligible. (3-30-07)

4236. TRANSITIONAL MEDICAID FAMILY RETURNS TO IDAHO.

If Transitional Medicaid is closed because the family left the state, the Transitional Medicaid is reopened if the family returns to Idaho during the twelve (12) month period. The participants remain eligible for the rest of the original twelve (12) months if all eligibility requirements are met. The months of absence are counted as if the participants had actually received Transitional Medicaid during those months. (3-30-07)

4247. NEW PERSONS MOVE INTO TRANSITIONAL MEDICAID HOME.

New persons moving into the home during the twelve (12) month Transitional Medicaid period are eligible for Medicaid if they are mandatory members of the budget unit as described in Section 401 of these rules. (3-30-07)

~~4258.~~ -- 499. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0703

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, 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 17, 2007.

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 rulemaking revises the reporting requirements to state that all Medicaid participants must report any changes in their circumstances that may affect their benefits by the 10th of the month following the month in which the change occurred.

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 this rulemaking is being done to align the reporting requirements with rules for the Food Stamp program and is based on federal recommendations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Linda Palmer at (208) 334-5845.

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 24, 2007.

DATED this 15th day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET 16-0301-0703

610. REPORTING REQUIREMENTS.

Changes in family circumstances must be reported to the Department. ~~Participants have ten (10) days, from the date the change is known, to report~~ by the tenth of the month following the month in which the change occurred. Report of changes may be made verbally, in writing, through personal contact, telephone, fax, electronic mail, or mail.

(3-30-07)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-0701 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Sections 32-1214G and 56-203A, Idaho Code.

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

Tuesday, October 16, 2007
6:00 p.m.
DHW - Region IV Office
1720 Westgate Drive
Suite D, Room 119
Boise, ID

Wednesday, October 17, 2007
6:00 p.m.
DHW - Region I Office
1120 Ironwood Drive
Large Conference Room
Coeur d'Alene, ID

Thursday, October 18, 2007
6:00 p.m.
DHW - Region VI Office
1090 Hilina Road
2nd Floor, Conference Rm B
Pocatello, ID

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

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

This rule implements a federal mandate from the Deficit Reduction Act (DRA) of 2005. Each State is required to set up a process to collect a \$25 annual fee for each enforced child support case that has never participated in a cash assistance program. Collection of this annual fee is to take place once \$500 in support payments has been collected on each case, each year. For every \$25 collected, the federal government gets roughly \$17 and states keep \$8. Idaho must implement this program or face loss of federal TANF funds.

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:

Failure to comply with the DRA mandate would violate state plan requirements, which would expose the state to penalties or potential loss of Idaho's TANF funding. The loss of this funding would create an immediate danger to the health and safety of children and families in Idaho.

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 rulemaking imposes a new twenty-five dollar (\$25) annual fee upon the custodial parent receiving child support enforcement services. The Federal Budget Deficit Reduction Act of 2005 mandates that this fee be imposed in each child support case in which an individual has never received assistance under a program funded under the Temporary Assistance for Needy Families (TANF) program (Title IV-A of the Social Security Act) and where the state has collected more than five hundred dollars (\$500) in support during the Federal Fiscal Year (FFY). Despite the fact that the Federal law requiring this fee was passed during the 2005 Federal Legislative Session the proposed Federal Regulation, governing the application and imposition of this fee, was not published until January 24, 2007. The penalty for not complying with this mandate is non-compliance with Federal State Plan requirements, which could result in penalties or potential loss of Idaho's TANF funding. The loss of this funding would create an immediate danger to the health and safety of children and families in Idaho.

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.

Pursuant to the Budget Deficit Reduction Act of 2005 Idaho Child Support Services will be required to pay to the Federal Office of Child Support Enforcement \$25 on all cases meeting the criteria set forth in this rule whether or not the fee has been collected. Based upon current cases qualifying for assessment of the fee the estimated payment will be approximately \$995,000 annually. If the fee is not collected as contemplated by this rule that payment would have to be made up from State General Funds. Upon implementation Idaho would be entitled to retain approximately one-third (1/3) of the total collected which is to be invested into the child support program. Self Reliance (SR) is requesting additional Receipt authority in Operating to collect the estimated \$995,000. For SFY 2008, SR was appropriated a total of \$2,265,000 in authority for receipts. Current projection in September of 2007 shows the entire authority to be utilized before the \$25 fee is implemented. Therefore, Self Reliance is seeking to increase the receipt authority to \$3,260,000 in order to collect this federally mandated fee.

The cost for the implementation of this rule through required information technology system development is estimated to run approximately \$489,300. Of the total project cost, \$236,300 has already been budgeted in the State FY 2008 Department of Health and Welfare, Division of Information Technology budget; the balance would be made up from the operating budget for the Department of Health and Welfare, Division of Welfare, Child Support Services with match provided by the associated receipts.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is being made in order to align the rule with the Federal Deficit Reduction Act of 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kandace Yearsley at (208) 334-0620.

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 24, 2007.

DATED this 22nd day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0303-0701

304. FEES.

01. Application Fee. At the time of application for child support services, a written application must be completed and a fee of twenty-five dollars (\$25) must be paid. The fee must be paid in advance of any services to be provided and is not refundable. (7-1-98)

02. Income Tax Offset Fees. A fee of twenty-five dollars (\$25) will be deducted each time child support is collected as a result of an income tax offset. (7-1-98)

03. Internal Revenue Service (IRS) Referral Fees. A fee of one hundred twenty-two dollars and fifty cents (\$122.50) shall be charged for a referral to the IRS for full collection of the child support obligation. (7-1-98)

04. Locate Fees. Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided. Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-98)

05. Federally Mandated Annual Service Fees. Child Support Services must charge an applicant/recipient who receives Title IV-D services, but has never received assistance under a State or Tribal Title IV-A program, an annual fee of twenty-five dollars (\$25) in each case in which Child Support Services has disbursed to the family at least five hundred dollars (\$500) of support in the federal fiscal year. The fee will be deducted from subsequent collections received until the twenty-five dollars (\$25) has been collected. (10-1-07)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-0701
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 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 56-203, 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 17, 2007.

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 less error-prone and make the requirements for reporting changes in circumstances consistent for all food stamp households, the Department is amending the rules to make the reporting timeframe the same for all food stamp households. The Department is also amending two sections of rules to bring them into compliance with federal regulations regarding the treatment of applications for food stamp benefits.

The rule amendments confer benefits to food stamp households as follows:

1. Standardization of the monthly reporting date on which all food stamps households must report any changes in their circumstances will make change reporting easier for food stamp households. It will also provide them with an additional month of benefits when the change being reported will end food stamp benefits for the household.
2. A new reference to the Code of Federal Regulations (CFR) points to the requirement that a new food stamp application must be filed if a food stamp applicant fails to attend or reschedule the eligibility interview within 30 days of submitting the application. This will make it easier for food stamp households to understand how long they can delay completing the application process (e.g., by not attending an interview) without having to file a new application.
3. A second new reference to the Code of Federal Regulations (CFR) points to the requirements for how to prorate the food stamp benefit amount when a food stamp applicant delays the processing of the application. The result is that food stamp households will receive benefits back to the application date if they attempt to reschedule the required eligibility interview within 30 days and provide the required verifications within 10 days of the interview; if they attend the interview, and fail to provide the required eligibility verifications within 10 days, but subsequently provide these verifications between days 30 and 60 after their initial application, they will receive benefits back to the first day of the month following the month of application. Currently, they only receive benefits starting the day they finally provide their verifications.

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 because it confers a benefit to food stamp participants.

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 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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to bring food stamp rules into compliance with federal regulations and increase consistency in the Food Stamp Program.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza (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 Wednesday, October 24, 2007.

DATED this 22nd day of August, 2007.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0701

106. DETERMINATION OF WHEN A NEW APPLICATION FOR ASSISTANCE (AFA) ~~NOT~~ IS REQUIRED.

A new AFA is not required if the household delays processing thirty (30) days following the application and the Department denies the application, then the household takes the required action within sixty (60) days of the application date. The Department must follow the procedure outlined in 7 CFR 273.2(g) and (h) in determining when a food stamp household is required to fill out a new application for assistance (AFA). ~~(6-1-94)(10-1-07)T~~

(BREAK IN CONTINUITY OF SECTIONS)

147. CASE ACTION AFTER DELAY CAUSED BY HOUSEHOLD.

The Department will send notice and deny an application if the household caused the delay by filing an incomplete application, failing to attend an interview, or not providing required verification. If the household takes required action within sixty (60) days after the application date, the Department will reopen the case without a new application. The Department must follow the procedure outlined in 7 CFR 273.2(g) and (h) in determining the appropriate action to take on food stamp benefits when the household has delayed completing the application process. ~~(4-11-06)(10-1-07)T~~

01- First Thirty Day Period. *If the household caused the delay during the first thirty (30) day period and provides proof by the thirtieth day, reopen the case and prorate benefits from the date of application.* ~~(4-11-06)~~

02- Second Thirty Day Period. *If the household caused the delay during the first thirty (30) day period and is eligible during the second thirty (30) day period, the Department will approve Food Stamps for the month after the application month. Food Stamps for the month after the application month must be prorated from the date the household provides requested proof. The Department will not issue food stamps for the application month.* ~~(4-11-06)~~

(BREAK IN CONTINUITY OF SECTIONS)

389. REPORTING RESOURCES.

~~Recipient~~ Households receiving food stamps must report resource changes at each recertification. Change reporting households must also report ~~changes within ten (10) days after receiving a new resource. A household must report~~ when cash on hand, stocks, bonds, or money in a financial institution reaches or exceeds the resource limit. A household must report if it obtains a vehicle. (4-11-06)(10-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

572. HOUSEHOLD COMPOSITION CHANGES FOR CHANGE REPORTING HOUSEHOLDS.

~~Changes in household composition are required to be reported for change reporting households. Changes must be reported within ten (10) days of the date the change occurs. The~~ Change reporting food stamp households must report changes in household composition. Any change reported is effective for the month after it is reported, allowing for timely notice. (4-11-06)(10-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

611. TIME FRAMES FOR REPORTING CHANGES IN HOUSEHOLD CIRCUMSTANCES.

Households must report changes in circumstances as required by the household's reporting group. ~~Except for income changes, households must report changes within ten (10) days of the date the change becomes known to the household. If changes in circumstances occur after the certification interview, but before the Notice of Decision is sent, the household must report changes within ten (10) days of the Notice of Decision date. For income changes, the following reporting timeframes are determined by the reporting group to which a household has been assigned:~~ Households must report changes to the Department by the tenth day of the month following the month in which the change occurred. (4-6-05)(10-1-07)T

01. ~~Change Reporting Households After the Certification Interview.~~ ~~When a change in income listed under Subsection 601.01 of these rules is received by a change reporting household, the household must report the change within ten (10) days of receiving it. If changes in circumstances occur after the certification interview but before the Notice of Decision is sent, the household must report changes to the Department by the tenth day of the month following the month in which they receive the Notice of Decision.~~ (4-6-05)(10-1-07)T

02. Simplified Reporting Households. When the actual gross income received in a month by a simplified reporting household is greater than one hundred thirty percent (130%) of the poverty limit for the household size, the household must report this change by the tenth day of the month ~~after~~ following the month in which the income exceeded the limit. (4-6-05)(10-1-07)T

03. Must Not Impose Added Reporting Requirements. The Department must not require additional household reporting not listed in these rules. (6-1-94)

04. Report Form. The Department must give households a Change Report Form at certification, at recertification, when the household reports a change, and when the household requests the form. (4-6-05)

05. Reporting Methods. Changes can be reported by telephone, personal contact, or mail. Changes can be reported by a household member or authorized representative. (6-1-94)

06. Failure to Report. If Food Stamps are overissued because a household fails to report required changes, a Claim Determination must be prepared. A person can be disqualified for failure to report a change if he commits an Intentional Program Violation. (7-1-99)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)**

DOCKET NO. 16-0305-0703

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.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Wednesday, October 10, 2007 6:00 p.m. (Pacific Time) Health & Welfare Reg. 1 Lower Floor Conference Room 1120 Ironwood Dr. Coeur d'Alene, ID 83814	Thursday, October 11, 2007 6:00 p.m. Health & Welfare Reg. 5 Conference Room A/C 601 Pole Line Road Twin Falls, ID 83301	Monday, October 15, 2007 6:00 p.m. Health & Welfare Reg. 4 1720 Westgate Drive Suite D, Room 119 Boise, ID 83209
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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 Department negotiated on issues dealing with estate planning, trusts, and life estates for persons eligible for Aid to the Aged, Blind, and Disabled (AABD). Through those negotiations the following issues are being addressed:

1. Definitions for long-term care, partnership policy, pension funds, and retirement funds;
2. A life estate table to determine value of the asset at the time of transfer;
3. Clarification to the way the community spouse resource allowance is determined when one of the couple is a long-term care participant; and
4. Clarification to the penalty exceptions for asset transfers.

These rules are also being amended to change reporting requirements for changes in circumstances to align the AABD rules with other program rules. By having the same timelines, a participant enrolled in more than one assistance program would receive better customer service because of improvements in reporting accuracy and workload management.

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.

This rulemaking has no anticipated fiscal impact on the state general fund.

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 6, 2007, on page 66.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susie Cummins at (208) 732-1419.

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 24, 2007.

DATED this 22nd day of August, 2007.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET 16-0305-0703

005. DEFINITIONS.

These definitions apply to IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)”:

01. AABD Cash. An EBT payment to a participant, a participant’s guardian, or a holder of a limited power of attorney for EBT payments. (7-1-99) (5-3-03)

02. Applicant. A person applying for public assistance from the Department, and whose application is not fully processed. (7-1-99) (3-30-07)

03. Annuity. A right to receive periodic payments, either for life, a term of years, or other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially-based payment from an insurance pool. (3-30-07)

04. Asset. Includes all income and resources of the individual and the individual’s spouse, including any income or resources which the individual or such individual’s spouse is entitled to, but does not receive because of action by: (3-30-07)

a. The individual or such individual’s spouse; (3-30-07)

b. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual’s spouse; or (3-30-07)

c. A person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual’s spouse. (3-30-07)

05. Asset Transfer for Sole Benefit. An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (7-1-99) (5-3-03)

06. Child. A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (7-1-99)

- 07. Department.** The Department of Health and Welfare. (7-1-99)
- 08. Direct Deposit.** The electronic deposit of a participant's AABD cash to the participant's personal account with a financial institution. (7-1-99)
- 09. Electronic Benefits Transfer (EBT).** A method of issuing AABD cash to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, "Rules Governing Electronic Payments of Public Assistance, Food Stamps and Child Support." (7-1-99)
- 10. Essential Person.** A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person provides the services a participant needs to live at home. (5-3-03)
- 11. Fair Market Value.** The fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. (5-3-03)
- 12. Long-Term Care.** Long-term care services are services provided to an institutionalized individual as defined in 42 U.S.C. 1396p(c)(1)(C). (3-30-07)
- 13. Medicaid.** The Federally-funded program for medical care (Title XIX, Social Security Act). (5-3-03)
- 14. Medical Assistance Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)
- 15. Medicaid for Families With Children Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (7-1-99)
- 16. Participant.** An individual applying for or receiving assistance. (7-1-99)
- 17. Partnership Policy.** A partnership policy is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986 and meets the requirements of the long-term care insurance model regulation and long-term care insurance model act promulgated by the National Association of Insurance Commissioners (NAIC) and as incorporated in 42 USC 1396p(b)(5)(A). ()
- 18. Pension Funds.** Pension funds are funds held in individual retirement accounts (IRAs), as described by the Internal Revenue Code, or in work-related pension plans, including plans for self-employed individuals and sometimes referred to as Keogh plans. ()
- 19. Retirement Funds.** Retirement funds are annuities or work-related plans for providing income when employment ends, such as pension, disability or retirement plans administered by an employer or union. Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals and sometimes referred to as Keogh plans. Depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds. ()
- ~~1720.~~ **Sole Beneficiary.** The only beneficiary of a trust, including a beneficiary during the grantor's life, a beneficiary with a future interest, and a beneficiary by the grantor's will. (7-1-99)
- ~~1821.~~ **TAFI Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho." (7-1-99)
- ~~1922.~~ **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)
- ~~203.~~ **Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-30-07)

- ~~244.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

605. REPORTING REQUIREMENTS.

The participant must report changes in circumstances verbally or in writing, ~~within ten (10) calendar days from the date the change becomes known to him~~ by the tenth of the month following the month in which the change occurred. The participant must show good cause for not reporting changes. If failure to report a change results in an overpayment, the overpayment must be recovered. (7-1-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

735. FEDERAL SPOUSAL IMPOVERISHMENT (FSI) METHOD OF COUNTING INCOME AND RESOURCES OF A COUPLE.

The FSI method must be used to compute income and resources of a married participant, who requires long-term care ~~participant~~ as defined in Section 005 of these rules, ~~with~~ and who has a community spouse. The participant must have entered long-term care on or after September 30, 1989. Terms used in the FSI method are listed in Subsections 735.01 through 735.05 of this rule. (7-1-99)(____)

01. Long-Term Care Spouse. The long-term care spouse must be in a medical institution or nursing facility, or be an HCBS participant, for thirty (30) consecutive days, or appear likely to meet the thirty (30) days requirement. (7-1-99)

02. Community Spouse. The community spouse is the husband or wife of the long-term care participant. A community spouse is not in long-term care and is not an HCBS participant. (7-1-99)

03. Continuous Period of Long-Term Care. A continuous period of long-term care is a period of residence either in a medical institution with nursing facility services, or at home with HCBS. A continuous period of long-term care is also a combination of institution and personal care services likely to last at least thirty (30) consecutive days. Absence from the institution, or a lapse in HCBS eligibility, of thirty (30) consecutive days breaks continuity. The thirty (30) consecutive days of long-term care must not begin on a day the participant is hospitalized. If the participant is hospitalized after the first day of the thirty (30) consecutive days, the hospital stay does not interrupt the thirty (30) consecutive days. (7-1-99)

04. Start of Continuous Period. The start of a continuous period of long-term care is the first month of long-term care or HCBS. (7-1-99)

05. Nursing Facility Services. Nursing facility services are services at the nursing facility level or the intermediate care for the mentally retarded level provided in a medical institution. (7-1-99)

736. ASSESSMENT DATE AND COUNTING FSI RESOURCES.

The assessment date is the start date of the first continuous period of long-term care, ~~on or after September 30, 1989.~~ The Department does a one-time assessment to determine the value of the couple's community and separate resources as of the date of the first continuous period of long-term care ~~on or after September 30, 1989.~~ The resource assessment is done at the request of either spouse, after one spouse is in long-term care or begins meets the level of care for HCBS, whether or not the couple has applied for Medicaid. State laws relating to community property or the division of marital property are not applied in determining the FSI total combined resources of the couple. (7-1-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

744. INCOME COUNTED FIRST FOR CSRA REVISION.

Income is determined prior to determining resources. If the couple's income is more than the minimum CSANS, the CSRA cannot be increased. If the community spouse has less income than the minimum CSANS, the CSRA ~~must~~ may be increased as provided in Section 745 of these rules. Couple income is the community spouse's gross income plus the long-term care spouse's income. The long-term care spouse's income is his gross income less the AABD cash income exclusions and his patient liability income deductions, but not the CSA deduction. (3-30-07)(____)

745. UPWARD REVISION OF CSRA.

If the community spouse's income, including income from his CSA and income-producing resources in his CSRA, is less than the minimum CSANS, the CSRA ~~must~~ may be increased. The CSRA is increased by enough resources, transferred from the long-term care spouse, to raise the community spouse's income to the minimum CSANS. Resources included in the transfer are presumed to produce income of five percent (5%) yearly, whether or not the resources produce income, or produce five percent (5%). If the community spouse shows he is making reasonable use of his income and resources, to generate income, the Department may waive the five percent (5%) yearly income requirement. Actual income produced by the resources transferred to the community spouse is used to compute the CSA. A higher CSA can be requested under Section 727 of these rules. If the transferred resources produce more than five percent (5%) yearly income, the actual income produced is used to determine the additional resources that can be transferred to the community spouse in the CSRA. The long-term care spouse must transfer the resources to the community spouse, or the CSRA is not revised. (3-30-07)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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 the requirements in Subsections 799.01 through 799.07 of this rule. (3-30-07)

- 01. Non-Financial Requirements.** An individual must: (3-30-07)
 - a. Be at least sixteen (16) but less than sixty-five (65) years of age; (3-30-07)
 - b. Meet the Medicaid residency requirement as described in Section 100 of these rules; (3-30-07)
 - c. Meet the citizenship requirements as described in Sections 105 and 106 of these rules; (3-30-07)
 - d. Meet the SSN requirements as described in Section 104 of these rules; and (3-30-07)
 - e. Meet the child support cooperation requirements as described in Sections 703 through 706 of these rules. (3-30-07)
- 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. (3-30-07)
- 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. (3-30-07)
- 04. Resources.** Countable resources cannot exceed ten thousand dollars (\$10,000) for an individual or fifteen thousand dollars (\$15,000) for a couple. When calculating resources the following items will be excluded: (3-30-07)
 - a. Any resources excluded under Sections 200 through 299 of these rules; (3-30-07)

- b. A second vehicle as described in Sections 222 of these rules; (3-30-07)
- c. Life insurance policies; (3-30-07)
- d. Retirement accounts; and (3-30-07)
- e. Exempt trusts as described in Section 872 of these rules. (3-30-07)

05. Countable Income. Countable income is calculated using exclusions and disregards as described in Sections 300 through ~~499~~ 547 of these rules. (~~3-30-07~~)(____)

a. An individual’s countable income cannot exceed five hundred percent (500%) of the current federal poverty guideline for a household of one (1). (3-30-07)

b. A couple’s countable income cannot exceed five hundred percent (500%) of the current federal poverty guideline for a household of two (2). (3-30-07)

06. Earned Income Test. Gross income is the total of earned and unearned income before exclusions or disregards. Each individual’s gross earned income must be at least fifteen percent (15%) of his total gross income to qualify. (3-30-07)

06. Cost-Sharing. A participant in the Medicaid for Workers with Disabilities coverage group may be required to cost-share. If a participant is required to cost-share for Medicaid, the costs are determined under the provisions in IDAPA 16.03.18, “Medicaid Cost-Sharing.” (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

834. PERIOD OF RESTRICTED COVERAGE FOR ASSET TRANSFERS.

The period of restricted coverage is the number of months computed by dividing the net uncompensated value of the transferred asset by the statewide average cost of nursing facility services to private patients. The cost is computed for the time of the participant’s most recent request for Medicaid. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. (~~3-30-07~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

837. LIFE ESTATE AS ASSET TRANSFER.

01. Transfer of a Remainder Interest. When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look-back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant’s age at the time of transfer listed in the following table:

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
0	.02812	1	.01012	2	.00983	3	.009292

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
4	.01019	5	.01062	6	.01116	7	.01178
8	.01252	9	.01337	10	.01435	11	.01547
12	.01671	13	.01802	14	.01934	15	.02063
16	.02185	17	.02300	18	.02410	19	.02520
20	.02635	21	.02755	22	.02880	23	.03014
24	.03159	25	.03322	26	.03505	27	.03710
28	.03938	29	.04187	30	.04457	31	.04746
32	.05-058	33	.05-392	34	.05-750	35	.06132
36	.06540	37	.06974	38	.07433	39	.07917
40	.08429	41	.08970	42	.09543	43	.10145
44	.10779	45	.11442	46	.12137	47	.12863
48	.13626	49	.14422	50	.15257	51	.16126
52	.17031	53	.17972	54	.18946	55	.19954
56	.20994	57	.22069	58	.23178	59	.24325
60	.25509	61	.26733	62	.27998	63	.29304
64	.30648	65	.32030	66	.33449	67	.34902
68	.36390	69	.37914	70	.39478	71	.41086
72	.42739	73	.44429	74	.46138	75	.47851
76	.49559	77	.51258	78	.52951	79	.54643
80	.56341	81	.58033	82	.59705	83	.61358
84	.63002	85	.64641	86	.66236	87	.67738
88	.69141	89	.70474	90	.71779	91	.73045
92	.74229	93	.75308	94	.76272	95	.77113
96	.77819	97	.78450	98	.79000	99	.79514
100	.80025	101	.80468	102	.80946	103	.81563
104	.82144	105	.83038	106	.84512	107	.86591
108	.89932	109	.95455				

(3-30-07)()

02. Transfer of a Life Estate. When a life estate in real property is transferred by an individual during the look-back period for less than fair market value, the value of the life estate is subject to the asset transfer penalty as described in Sections 831 and 835 of these rules. To compute the value of the life estate, multiply the fair market value of the real property at the time of transfer by the life estate factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.02 - LIFE ESTATE TABLE							
Age	Life Estate	Age	Life Estate	Age	Life Estate	Age	Life Estate
<u>0</u>	<u>.97188</u>	<u>1</u>	<u>.98988</u>	<u>2</u>	<u>.99017</u>	<u>3</u>	<u>.99008</u>
<u>4</u>	<u>.98981</u>	<u>5</u>	<u>.98938</u>	<u>6</u>	<u>.98884</u>	<u>7</u>	<u>.98822</u>
<u>8</u>	<u>.98748</u>	<u>9</u>	<u>.98663</u>	<u>10</u>	<u>.98565</u>	<u>11</u>	<u>.98453</u>
<u>12</u>	<u>.98359</u>	<u>13</u>	<u>.98198</u>	<u>14</u>	<u>.98066</u>	<u>15</u>	<u>.97937</u>
<u>16</u>	<u>.97815</u>	<u>17</u>	<u>.97700</u>	<u>18</u>	<u>.97590</u>	<u>19</u>	<u>.97480</u>
<u>20</u>	<u>.97365</u>	<u>21</u>	<u>.97425</u>	<u>22</u>	<u>.97120</u>	<u>23</u>	<u>.96986</u>
<u>24</u>	<u>.96841</u>	<u>25</u>	<u>.96678</u>	<u>26</u>	<u>.96495</u>	<u>27</u>	<u>.96290</u>
<u>28</u>	<u>.96062</u>	<u>29</u>	<u>.95813</u>	<u>30</u>	<u>.95543</u>	<u>31</u>	<u>.95254</u>
<u>32</u>	<u>.94942</u>	<u>33</u>	<u>.94608</u>	<u>34</u>	<u>.94250</u>	<u>35</u>	<u>.93868</u>
<u>36</u>	<u>.93460</u>	<u>37</u>	<u>.93026</u>	<u>38</u>	<u>.92567</u>	<u>39</u>	<u>.92083</u>
<u>40</u>	<u>.91571</u>	<u>41</u>	<u>.91030</u>	<u>42</u>	<u>.90457</u>	<u>43</u>	<u>.89855</u>
<u>44</u>	<u>.89221</u>	<u>45</u>	<u>.88558</u>	<u>46</u>	<u>.87863</u>	<u>47</u>	<u>.87137</u>
<u>48</u>	<u>.86374</u>	<u>49</u>	<u>.85578</u>	<u>50</u>	<u>.83743</u>	<u>51</u>	<u>.83674</u>
<u>52</u>	<u>.82969</u>	<u>53</u>	<u>.82028</u>	<u>54</u>	<u>.81054</u>	<u>55</u>	<u>.80046</u>
<u>56</u>	<u>.77006</u>	<u>57</u>	<u>.77391</u>	<u>58</u>	<u>.76822</u>	<u>59</u>	<u>.75675</u>
<u>60</u>	<u>.74491</u>	<u>61</u>	<u>.73267</u>	<u>62</u>	<u>.72002</u>	<u>63</u>	<u>.70696</u>
<u>64</u>	<u>.69352</u>	<u>65</u>	<u>.67970</u>	<u>66</u>	<u>.66551</u>	<u>67</u>	<u>.65098</u>
<u>68</u>	<u>.63610</u>	<u>69</u>	<u>.62086</u>	<u>70</u>	<u>.60522</u>	<u>71</u>	<u>.58914</u>
<u>72</u>	<u>.57261</u>	<u>73</u>	<u>.55571</u>	<u>74</u>	<u>.53862</u>	<u>75</u>	<u>.52149</u>
<u>76</u>	<u>.50441</u>	<u>77</u>	<u>.48742</u>	<u>78</u>	<u>.47049</u>	<u>79</u>	<u>.45357</u>
<u>80</u>	<u>.43659</u>	<u>81</u>	<u>.41967</u>	<u>82</u>	<u>.40295</u>	<u>83</u>	<u>.38642</u>
<u>84</u>	<u>.36998</u>	<u>85</u>	<u>.35359</u>	<u>86</u>	<u>.33764</u>	<u>87</u>	<u>.32262</u>
<u>88</u>	<u>.30859</u>	<u>89</u>	<u>.29526</u>	<u>90</u>	<u>.28221</u>	<u>91</u>	<u>.26955</u>
<u>92</u>	<u>.25771</u>	<u>93</u>	<u>.24692</u>	<u>94</u>	<u>.23728</u>	<u>95</u>	<u>.22887</u>
<u>96</u>	<u>.22181</u>	<u>97</u>	<u>.21550</u>	<u>98</u>	<u>.21000</u>	<u>99</u>	<u>.20486</u>
<u>100</u>	<u>.19975</u>	<u>101</u>	<u>.19532</u>	<u>102</u>	<u>.19054</u>	<u>103</u>	<u>.18437</u>
<u>104</u>	<u>.17856</u>	<u>105</u>	<u>.16962</u>	<u>106</u>	<u>.15488</u>	<u>107</u>	<u>.13409</u>
<u>108</u>	<u>.10068</u>	<u>109</u>	<u>.04545</u>				

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838. ANNUITY AS ASSET TRANSFER.

Except as provided in this rule, when assets are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption, the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for

Medicaid or avoid recovery from the estate following death. In addition, the participant must show the annuity will be paid out in the participant's expected life, is irrevocable, earns interest at a reasonable rate of return, and names the state as the remainder beneficiary as described in Subsections 838.02 through 838.04 of these rules, unless the annuity is permitted under Section 838.05. (3-30-07)

01. Revocable Annuity. The surrender amount of a revocable annuity is a countable resource. (3-30-07)

02. Irrevocable Annuity. An irrevocable annuity is an annuity that under no circumstance can be sold or traded for value, including the sale of the stream of income from the annuity. The purchase price of an irrevocable annuity is treated as an asset transfer, unless the requirements of Subsections 838.02.a, 838.02.b., 838.03 and 838.04 of these rules are met. (3-30-07)

a. Irrevocable Annuity Life Expectancy Test. The participant's life expectancy, as shown in the following table, must equal or exceed the term of the annuity. Using Table 838.02.a. compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 838.02.a. - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.75	95	2.71	3.26
72	11.24	14.06	100	2.05	2.39
73	10.67	13.40	110	1.14	1.22

(3-30-07)

b. Annual Interest and Insurer Rating Test. The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. To rebut the five percent (5%) interest test, the participant must show that single premium annuities were not offered by insurers when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. The insurer must be rated excellent or superior by an insurance rating firm. (3-30-07)

03. State Named as Beneficiary. The purchase of an annuity is treated as an asset transfer unless the State of Idaho, Medicaid Estate Recovery is named as: (3-30-07)

a. The remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the ~~annuitant~~ institutionalized individual under this title; or (~~3-30-07~~)(____)

b. The remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value. (3-30-07)

04. Equal Payment Test. The annuity must provide for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. (3-30-07)

05. Permitted Annuity. The purchase of an annuity is not treated as an asset transfer if the annuity meets any of the descriptions in Sections 408(b), or 408(q), Internal Revenue Code; or is purchased with proceeds from an account or trust described in Sections 408(a), 408(c), or 408(p), Internal Revenue Code, or is a simplified employee pension as described in Section 408(k), Internal Revenue Code, or is a Roth IRA described in Section 408A, Internal Revenue Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

841. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.

A participant is not subject to the asset transfer penalty for taking any action described in Subsections 841.01 through 841.14 of ~~these~~ this rules. (~~3-20-04~~)(____)

01. Home to Spouse. The asset transferred was a home. Title to the home was transferred to the spouse. (7-1-99)

02. Home to Minor Child or Disabled Adult Child. The asset transferred was a home. Title to the home was transferred to the child of the participant or spouse. The child must be under age twenty-one (21) or blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

03. Home to Brother or Sister. The asset transferred was a home. Title to the home was transferred to a brother or sister of the participant or spouse. The brother or sister must have an equity interest in the transferred home. The brother or sister must reside in that home for at least one (1) year immediately before the month the participant starts long-term care. (7-1-99)

04. Home to Adult Child. The asset transferred was a home. Title to the home was transferred to a son or daughter of the participant or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in that home for at least two (2) years immediately before the month the participant started long-term care. The adult child must prove he provided nursing facility level medical care to the participant which permitted him to live at home rather than enter long-term care. The son or daughter must not have ~~provided~~ received payment from Medicaid for home and community based services as a paid Medicaid provider provided to the participant. (~~3-30-07~~)(____)

05. Benefit of Spouse. The assets were transferred to the participant's spouse or to another person for the sole benefit of the spouse. (7-1-99)

06. Transfer From Spouse. The assets were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. (7-1-99)

07. Transfer to Child. The assets were transferred to the participant's child, or to a trust established solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. (7-1-99)

08. Intent to Get Fair Market Value. The participant or spouse proves he intended to dispose of the assets at fair market value or for other adequate consideration. (7-1-99)

09. Assets Returned. All assets transferred for less than fair market value have been returned to the participant. (7-1-99)

10. Medicaid Qualification Not the Intent. The participant or spouse proves the assets were transferred exclusively for a purpose other than to qualify for Medicaid or to avoid recovery. (3-20-04)

11. Undue Hardship. The participant, his representative, or the facility in which he resides may request the hardship waiver. The hardship waiver must be requested in writing within ten (10) days of the date of the asset transfer penalty notice. Undue hardship exists if any of the conditions in Subsections 841.11.a. through 841.11.d. of ~~these~~ this rules apply. (~~3-30-07~~)()

a. The participant proves he is not able to pay for his nursing facility services or his wavier services by any means. (3-30-07)

b. The participant proves that he has made reasonable efforts, consistent with his physical and financial ability, to recover the transferred asset. The participant must fully cooperate with the state of Idaho in efforts to recover the transferred asset and, upon request, must assign his rights to recover the asset to the State of Idaho. (3-30-07)

c. The participant proves he did not knowingly transfer the asset. (3-30-07)

d. The participant proves he would be deprived of food, clothing, shelter or other necessities of life if the asset transfer penalty is imposed and he assigns his rights to recover the asset to the State of Idaho. (3-30-07)

12. Exception to Fair Market Value. The amount received is adequate, even if not fair market value. This exception must meet one (1) of the conditions in Subsections 841.12.a. through 841.12.c. of ~~these~~ this rules. (~~3-20-04~~)()

a. A forced sale was done under reasonable circumstances. (7-1-99)

b. Little or no market demand exists for the type of asset transferred and the lack of market demand was not created by a voluntary act of the participant to qualify for assistance or to avoid recovery. (~~3-30-07~~)()

c. The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred asset. (7-1-99)

13. No Benefit to Participant. The participant received no benefit from the asset. This exception must meet one (1) of the conditions in Subsections 841.13.a. and 841.13.b. of ~~these~~ this rules. (~~3-20-04~~)()

a. The participant or spouse held title to the property only as a trustee for another person. The participant or spouse had no beneficial interest in the property. (7-1-99)

b. The transfer was done to clear title to property. The participant or spouse had no beneficial interest in the property. The defect in the title was not created in an attempt to transfer assets to qualify for assistance or avoid

recovery.

(3-30-07)

14. Fraud Victim. The asset was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the assets or property, or its equivalent in damages and must assign recovery rights to the state of Idaho. (3-20-04)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0704

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are July 1, 2007, July 13, 2007 and October 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, 56-203, 56-207 through 209a, and 56-253 through 255, Idaho Code, and the federal Tax Relief and Health Care Act of 2006 (TRHCA), and Deficit Reduction Act of 2005 (DRA).

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Wednesday, October 10, 2007 6:00 p.m. (Pacific Time) Health & Welfare Region 1 Lower Floor Conference Room 1120 Ironwood Dr. Coeur d'Alene, ID	Thursday, October 11, 2007 6:00 p.m. Health & Welfare Region 5 Conference Room A/C 601 Pole Line Road Twin Falls, ID	Monday, October 15, 2007 6:00 p.m. Health & Welfare Region 4 1720 Westgate Drive Suite D, Room 119 Boise, ID
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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:

- 1. Section 104 - Social Security Number (SSN) Requirement.** This rule is being amended to be align with the federal terminology for a deemed newborn child.
- 2. Section 105 - U.S. Citizenship and Identity Documentation.** Final federal regulations regarding Medicaid citizenship and identity requirements were published in the Federal Register on July 13, 2007. The citizenship and identity documentation rules are being amended to align with these regulations, which expand the types of documentation that can be used to establish citizenship and identity and exempts additional groups from the requirements.
- 3. Section 618 - Continued Benefits Pending a Hearing Decision.** When a participant disagrees with an eligibility decision, they have a right to request continued benefits pending the fair hearing. Per federal regulations, the participant has until the effective date of the action to request continued benefits. This rule change aligns Idaho Medicaid rules with federal regulations.
- 4. Section 872 - Exempt Trusts.** An individual who would otherwise be over the income limit for long-term care eligibility is allowed to place his income in trust and then used to meet the cost of care in the nursing home. The federal policy allows the person to become eligible in the same month that money is received and placed in the trust. Currently, Idaho requires the individual to change ownership of his income to the trust before it is not counted toward eligibility. The time it takes to make this change causes a delay and a hardship on applicants who do not have enough income to pay the private pay rate for their long-term care, but are over the Medicaid income limit. This rule change allows an individual to become eligible if the income is placed in trust the same month it is received.

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 changes are being made to align current rules with federal regulations and confer a benefit to individuals applying for Medicaid.

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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for the income trust issue is \$281,043. The federal match is 70/30, and the total cost to the state general fund is \$84,300.

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 6, 2007 on page 66 under Docket No. 16-0305-0703 for the issue of income trusts. Negotiated rulemaking was not conducted on the issues of citizenship, identity, or continued benefits.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 24, 2007.

DATED this 20th day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0305-0704

104. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

The applicant must provide his social security number (SSN) or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. An applicant with an unverified SSN is not eligible for AABD cash or Medicaid benefits. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (3-20-04)

01. Application for SSN. To be eligible, the applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

02. Failure to Apply for SSN. The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-20-04)

- a. Is a member of a recognized religious sect or division of the sect; and (3-20-04)
- b. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (3-20-04)
- 03. SSN Requirement Waived.** An applicant may have the SSN requirement waived when he is: (3-20-04)
 - a. Only eligible for emergency medical services as described in Section 801 of these rules; or (3-20-04)
 - b. A ~~waived~~ newborn child deemed eligible as described in Section 800 of these rules. ~~(3-20-04)~~(7-13-07)T

105. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

To be eligible for Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 105.089 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. ~~(3-30-07)~~(7-13-07)T

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
- b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 105.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 105.05 ~~or through~~ 105.067 of this rule to establish both citizenship and identity. ~~(3-30-07)~~(7-13-07)T

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
 - i. United States fifty (50) states; (3-30-07)
 - ii. District of Columbia; (3-30-07)
 - iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
 - iv. Guam, on or after April 10, 1899; (3-30-07)
 - v. U.S. Virgin Islands, on or after January 17, 1917, (3-30-07)
 - vi. America Samoa; (3-30-07)
 - vii. Swain's Island; or (3-30-07)
 - viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)

- c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
- d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e. A Northern Mariana Identification Card, Form I-873; (3-30-07)
- f. An American Indian Card issued by the Department of Homeland Security with the classification code "KIC," Form I-873; (3-30-07)
- g. A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
- h. Evidence of U.S. Civil Service employment before June 1, 1976; ~~(3-30-07)~~(7-13-07)T
- i. An official U.S. Military record showing a U.S. place of birth; ~~(3-30-07)~~(7-13-07)T
- j. A certification of birth abroad, FS-545; (7-13-07)T
- k. A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (7-13-07)T
- l. Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (7-13-07)T

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 105.05 ~~or~~ through 105.067 of this rule to establish both citizenship and identity. ~~(3-30-07)~~(7-13-07)T

- a. A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; ~~or~~ ~~(3-30-07)~~(7-13-07)T
- b. A ~~l~~ife, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; ~~(3-30-07)~~(7-13-07)T
- c. A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization; or (7-13-07)T
- d. An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child's parents. (7-13-07)T

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 105.01 through 105.03 of this rule do not exist and cannot be obtained for a person who claims U.S.citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 105.05 ~~or~~ through 105.067 of this rule to establish both citizenship and identity. ~~(3-30-07)~~(7-13-07)T

- a. Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b. One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years or age, the document must have been created near the time of birth; ~~(3-30-07)~~(7-13-07)T
 - i. Seneca Indian tribal census record; (3-30-07)

- ii. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
- iii. U.S. State vital Statistics official notification of birth registration; (3-30-07)
- iv. ~~An amended~~ delayed U.S. public birth record that ~~is amended~~ was recorded more than five (5) years after the person's birth; ~~(3-30-07)~~(7-13-07)T
- v. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
- vi. Medical (clinic, doctor, or hospital) record; (3-30-07)
- vii. Institutional admission papers from a nursing facility, skilled care facility or other institution; ~~or~~ ~~(3-30-07)~~(7-13-07)T
- viii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (7-13-07)T
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: ~~(3-30-07)~~(7-13-07)T
 - i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
 - ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
 - ~~iii. Neither of the two (2) persons making the declaration can be an applicant or recipient of Medicaid;~~ ~~(3-30-07)~~
 - ~~iv.~~ ii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; (3-30-07)
and
 - ~~v. The persons making the declaration must provide an explanation as to why documentation for the individual does not exist or cannot be obtained.~~ ~~(3-30-07)~~
 - ~~vi.~~ iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 105.0~~2~~3 through 105.04 of this rule to establish both citizenship and identity. ~~(3-30-07)~~(7-13-07)T

- a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)
- b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 105.05.a of this rule; (3-30-07)
- c. School identification card with a photograph of the individual; (3-30-07)
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast guard Merchant Mariner card; (3-30-07)

- g.** Certificate of Degree of Indian blood; ~~or~~ (3-30-07)(7-13-07)T
- h.** Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual; (3-30-07)(7-13-07)T
- i.** A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (7-13-07)T
- j.** A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 105.05.a. through 105.05.i. of this rule. (7-13-07)T

06. Additional Documents Accepted for Proof of Identity. If the participant provides citizenship documentation as described in Subsections 105.02 or 105.03 of this rule, three (3) or more corroborating documents may be used to prove identity. (7-13-07)T

067. Identity Rules for Children. The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

a. School records may be used to establish identity. Such records also include nursery or daycare records. (3-30-07)

b. Clinic, doctor, or hospital records. (7-13-07)T

bc. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 105.02 of this rule are not available. A declaration may be used if it meets the following conditions: (3-30-07)

i. It states the date and place of the child's birth; and (3-30-07)

ii. It is signed by a parent or guardian. (3-30-07)

d. A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 105.05.a. through 105.05.c. of this rule are not available. (7-13-07)T

eg. A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

078. Eligibility for Applicants and Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation. (3-30-07)

a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation; (3-30-07)

b. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

i. Does not meet other eligibility criteria required in this chapter of rules; or (3-30-07)

ii. Refuses to obtain the documentation. (3-30-07)

089. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements. The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 105.01 through 105.078 of this rule is provided: (3-30-07)(7-13-07)T

- a. Supplemental Security Income (SSI) recipients; and (~~3-30-07~~)(7-13-07)T
- b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (~~3-30-07~~)(7-13-07)T
- c. Social Security Disability Income (SSDI) recipients; and (7-13-07)T
- d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act. (7-13-07)T
- ~~09. **Title IV-E Foster Care Child.** The Department will not deny or delay Medicaid for a child receiving Title IV-E Foster Care assistance pending citizenship and identity documentation.~~ (~~3-30-07~~)
- 10. Assistance in Obtaining Documentation.** The Department will assist individuals who are mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)
- 11. Provide Documentation of Citizenship and Identity One Time.** When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

618. CONTINUED BENEFITS PENDING A HEARING DECISION.

The participant may continue to receive ~~assistance~~ benefits upon request, pending the hearing decision. The Department must receive the participant's request for continued benefits within ten (10) days of mailing before the effective date of the Department's action stated in the notice of decision. (~~3-15-02~~)(10-1-07)T

- 01. Amount of Assistance.** The Department will continue the participant's assistance at the current month's level while the hearing decision is pending, unless another change affecting assistance occurs. (3-15-02)
- 02. Continued Eligibility.** The participant must continue to meet all eligibility requirements not related to the hearing issue. (3-15-02)
- 03. Overpayment.** When the hearing decision is in the Department's favor, the participant must repay assistance received while the hearing decision was pending. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

872. EXEMPT TRUSTS.

A trust, created or funded on or after August 11, 1993, is exempt from trust treatment and not subject to the asset transfer penalty if it meets a condition in Subsections 872.01 through 872.03 of ~~these~~ this rules. (~~3-20-04~~)(7-1-07)T

- 01. Trust for Disabled Person.** To be exempt, a trust for a disabled person must meet all the conditions in Subsections 872.01.a. through 872.01.f. of ~~these~~ this rules. (~~3-20-04~~)(7-1-07)T
- a. The trust contains the assets of a person under age sixty-five (65). (7-1-99)
- b. The person is blind or totally disabled under the Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

- c. The trust is established for the person's benefit by his parent, grandparent, legal guardian or a court. (7-1-99)
- d. The trust is irrevocable. (7-1-99)
- e. The trust is exempt until the person reaches age sixty-five (65). After the person reaches age sixty-five (65), additions or augmentations are not exempt from trust treatment. (3-20-04)
- f. Upon the person's death, the amount not distributed by the trust must first be paid to the state of Idaho, up to the amount Medicaid has paid on the person's behalf. (3-20-04)

02. Income Trust. To be exempt, an income trust must meet all the conditions in Subsections 872.02.a. through 872.02.f. of ~~these~~ this rules. (~~3-20-04~~)(7-1-07)T

a. The trust is established for the sole benefit of a person who would be eligible for Medicaid in long-term care, or eligible for HCBS except for excess income. (3-20-04)

b. ~~All the money in the trust comes from the person's pensions, Social Security and other income, including income earned by the trust. Money paid into the trust is not income for Medicaid eligibility the month received. Any income, placed directly into an income trust in the same calendar month in which received by the recipient, is not considered income to the individual for determining long-term care Medicaid eligibility.~~ Money paid into the trust is income for patient liability or client participation. (~~7-1-99~~)(7-1-07)T

c. The trust is irrevocable. The trust document may include a clause allowing the trust to be revoked if the participant leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income, if Medicaid is reimbursed up to the amount Medicaid has paid on the person's behalf. (3-20-04)

d. ~~The trust only provides payments for patient liability or client participation, unless the payment meets the undue hardship penalty exception.~~ Income transferred to the trust must be used to pay patient liability or client participation. If income is not used to pay allowable expenses, it is subject to the asset transfer penalty, unless one (1) of the following exceptions in Subsections 872.02.d.i. through 872.02.d.iii. of this rule applies. (~~7-1-99~~)(7-1-07)T

i. Benefit of the spouse in Subsection 841.05 of these rules; (7-1-07)T

ii. Transfer from the spouse in Subsection 841.06 of these rules; or (7-1-07)T

iii. Undue hardship in Subsection 841.11 of these rules. (7-1-07)T

e. ~~Income transferred to the trust and not used to compute patient liability or client participation, is subject to the asset transfer penalty, unless the payment meets the undue hardship penalty exception.~~ (7-1-99)

f. Upon the person's death, the amount not distributed by the trust must first be paid to the state of Idaho, up to the amount Medicaid has paid on the person's behalf. (3-20-04)

03. Trust Managed by Non-Profit Association for Disabled Person. To be exempt, a trust managed by non-profit association for a disabled person must meet all the conditions in Subsections 872.03.a. through 872.03.e. of ~~these~~ this rules. (~~3-20-04~~)(7-1-07)T

a. The trust is established and managed by a nonprofit association. The nonprofit association must not be the participant, his parent or his grandparent. (7-1-99)

b. The trust contains the assets of a disabled person. The person must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

c. Accounts in the trust are established only for the benefit of disabled persons. An account can be established by the disabled person, his parent, grandparent, legal guardian, or a court. A separate account must be maintained for each beneficiary of the trust. For purposes of investment and management, the trust may pool the funds in the accounts. (3-20-04)

d. The trust is irrevocable. (7-1-99)

e. Upon the person's death, the amount not distributed by the trust must first be paid to the state of Idaho, up to the amount Medicaid has paid on the person's behalf. (3-20-04)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.06 - RULES GOVERNING REFUGEE MEDICAL ASSISTANCE
DOCKET NO. 16-0306-0701 (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 and 56-203, 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 17, 2007.

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 chapter is being repealed in its entirety. The text of the rewritten chapter IDAPA 16.03.06, "Refugee Medical Assistance," appears under Docket No. 16-0306-0702 that is being published simultaneously with this docket.

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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking and the related chapter rewrite are the result of ongoing discussions between the Department and the Mountain States Group (refugee center), the primary advocacy agency for refugees in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Linda Palmer at (208) 334-5845.

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 24, 2007.

DATED this 22nd day of August, 2007.

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@dhw.idaho.gov e-mail

IDAPA 16.03.06 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.06 - REFUGEE MEDICAL ASSISTANCE

DOCKET NO. 16-0306-0702 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code; also 45 CFR Parts 400 and 401, and 8 USC 1521.

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 17, 2007.

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 chapter is being rewritten to increase the accountability, consistency, accuracy, and efficiency of these administrative rules. As part of the rewrite, the rules are being reorganized to make it easier for the public and Department staff to locate information within the rules. In addition, the sections required by the Office of Administrative Rules (OAR) are either being updated to meet the Department's plain language standard or added because they are missing. Addition of the missing "required sections" is needed to bring the rule chapter into compliance with the OAR standards. Obsolete or otherwise incorrect citations are also being updated.

One major change in content will also be included in the rewrite. With the support of refugee advocates, the Department proposes to change the income limits for this chapter from the Aid to Families with Dependent Children (AFDC) payment standard of 1993 to 150% of the Federal Poverty Guidelines (FPG) based on the size of the refugee family. This proposed increase in the income limits will allow more refugees to be eligible for the 100% federally-funded Refugee Medical Assistance Program*. This change may enable refugees and their families to address their health issues sooner rather than later. As a result, they may be better able to maintain employment, obtain access to health insurance, and be less likely to go on Medicaid after the 8 months of Refugee Medical Assistance is exhausted.

**This is not part of the Medicaid program and does not involve Medicaid funding.*

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.

This rule change requires updates to the Department's automated eligibility determination system (EPICS) estimated to cost \$1,900. However, no net increase in operational costs is anticipated as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is the result of ongoing discussions between the Department and the Mountain States Group (refugee center), the primary advocacy agency for refugees in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Linda Palmer at (208) 334-5845.

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 24, 2007.

DATED this 24th day of August, 2007.

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. 16-0306-0702

IDAPA 16
TITLE 03
CHAPTER 06

16.03.06 - REFUGEE MEDICAL ASSISTANCE

000. LEGAL AUTHORITY.

This program is authorized by 45 CFR Parts 400 and 401, by Section 412E, Title IV, Pub. L. 96-212 also known as the Refugee Act of 1980, 94 Stat. 114 (8 USC 1521) and Action Transmittal ORR-AT-80-6, and by provisions of Sections 56-202 and 56-203, Idaho Code, which authorize the Department of Health and Welfare to assist needy people of the State with medical assistance and to enter into contracts with the federal government to provide assistance. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.03.06, "Refugee Medical Assistance." ()

02. Scope. This chapter of rules governs the administration of the Refugee Medical Assistance Program in the state of Idaho. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. 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 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. ()

007. -- 009. (RESERVED).

010. DEFINITION OF TERMS AND ABBREVIATIONS.

For the purposes of these rules, the following terms and abbreviations are used as defined below: ()

01. AFDC. Aid to Families with Dependent Children. AFDC is the family assistance program in effect on June 30, 1997. It was replaced by Temporary Assistance for Families in Idaho (TAFI). ()

02. Caretaker. A person related by blood or marriage who holds legal responsibility for the care and support of a minor child or otherwise dependent individual and who is needed in the home to care for such dependent. ()

03. Department. The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. ()

04. Eligible Amerasian. A citizen of Vietnam born between January 1, 1962, and January 1, 1976, who has one (1) American parent. ()

05. Entrant. A person from Cuba or Haiti who has been granted special immigration status by USCIS. ()

06. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the Department of Health and Human Services (HHS). ()

07. HHS. United States Department of Health and Human Services. ()

08. INA. Immigration and Nationality Act, 8 USC Sections 1101-1537. ()

09. IRSP. Idaho Refugee Service Program. ()

10. I-94. A white three by five (3x5) inch alien identification card issued to refugees prior to their release to a sponsor. This card gives the refugee's name, United States address, and other identifying data. The refugee status will be printed in the lower right hand corner. If a refugee does not have this card, he should be referred to USCIS to obtain one. The dependent of a repatriated United States citizen may also have an I-94 card. ()

11. Medical Assistance Program. Services funded by Titles XIX or XXI of the federal Social Security Act, as amended. ()

12. Refugee. An alien who: ()

a. Because of persecution or fear of persecution on account of race, religion, or political opinion fled from his homeland; and ()

b. Cannot return there because of fear of persecution on account of race, religion or political opinion. ()

13. State Children's Health Insurance Program (SCHIP). SCHIP is Title XXI of the Social Security Act. It is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low- income children. ()

14. TAFI. Temporary Assistance for Families in Idaho. TAFI is Idaho's family assistance program whose purpose is to provide temporary cash assistance for Idaho families who meet the eligibility requirements under IDAPA 16.03.08, "Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program." TAFI replaced the Aid to Families With Dependent Children (AFDC) program. ()

15. USCIS. United States Citizenship and Immigration Services, formerly known as Immigration and Naturalization Services (INS). ()

011. -- 099. (RESERVED).

100. IDENTIFICATION OF REFUGEES.

01. Refugee Immigration Status. A person has refugee status for purposes of assistance under the Refugee Medical Assistance Program if he is one (1) of the following: ()

a. A person from Cambodia, Laos, or Vietnam who has a Form I-94 indicating that the person has been paroled under Section 212(d)(5) of the Immigration and Nationality Act (INA). The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. ()

b. A person from Cuba who is present in the United States, and who has an I-94 indicating that the person has been paroled under Section 212(d)(5) of the INA. The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. ()

c. A person from any country who has Form I-94 indicating that the person has been: ()

i. Paroled under Section 212(d)(5) of the INA as a refugee or asylee; or ()

ii. Admitted as a conditional entrant under Section 203(a)(7) of the INA; or ()

iii. Admitted as a refugee under Section 207 of INA; or ()

iv. Granted asylum under Section 208 of INA; or ()

d. A person who entered the United States and has Form I-151 or I-551 showing that his status has been subsequently adjusted from one (1) of the statuses in Subsection 100.02.c. of this rule to that of permanent resident alien, provided he can document his previous status. ()

e. A child born in the United States to eligible refugee parent(s) with whom he lives. ()

f. An Amerasian together with close family members who entered the United States beginning March 20, 1988, in immigrant status through the Orderly Departure Program. Close family members who are eligible refugees under this provision are limited to: ()

i. The Amerasian's spouse and child(ren); ()

ii. The mother of an unmarried Amerasian and such mother's spouse and child(ren); and ()

iii. A person who has acted as the parent of an unmarried Amerasian and that person's spouse and child(ren). ()

02. Other Factors in Determining Eligibility for the Refugee Medical Assistance Program. ()

a. An applicant who has applied for, but has not been granted asylum, is not eligible. ()

b. A person who entered the United States as a resident alien is not eligible. ()

c. A Form I-94 which shows a person has been paroled into the United States under Section 212(d)(5) of the INA must clearly indicate that the person has been paroled as a "Refugee" or "Asylee" if such form was issued: ()

i. To a person from Cambodia, Laos, or Vietnam before October 1, 1997, in accordance with P.L. 106-429, Section 101(a), as amended by P.L. 108-447; or ()

ii. To a person from Cuba; or ()

iii. To a person from any other country at any time. ()

d. A person whose status is Cuban/Haitian Entrant must have his eligibility for benefits under the Refugee Medical Assistance Program determined under Sections 125 and 200 of these rules. ()

e. An Amerasian or close family member admitted as an immigrant but eligible for Refugee Medical Assistance as though he were a refugee must have either of the following documents verifying his status: ()

i. A temporary identification document, Form I-94 stamped "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until (expiration date). Employment authorized." The back of Form I-94 contains the stamped word "Admitted" and is coded AM1, AM2, or AM3; or ()

ii. A permanent identification document, Form I-551 coded AM6, AM7, or AM8. ()

101. -- 124. (RESERVED).

125. IDENTIFICATION OF ENTRANTS.

Identification of Cuban or Haitian entrants or other entrants, and determination of their eligibility for Refugee Medical Assistance must be conducted in accordance with 45 CFR 401. ()

126. -- 134. (RESERVED).

135. PRECEDENCE OF CATEGORICAL ASSISTANCE PROGRAMS.

01. New Applicants. An applicant for medical assistance must first have his eligibility determined for Medicaid or SCHIP. To be eligible for Medicaid or SCHIP, the refugee must meet all the eligibility criteria for the applicable category of assistance. If the applicant is determined ineligible for Medicaid or SCHIP, then the Department will determine his eligibility for the Refugee Medical Assistance Program. ()

02. Transfer of Cases. At the end of the eight (8) month time limit for Refugee Medical Assistance, a refugee who is determined Medicaid-eligible in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children" or IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," will be transitioned to Medicaid without the need to submit an additional application. ()

136. -- 149. (RESERVED).

150. REFUGEE MEDICAL ASSISTANCE PROGRAM.

01. Time Limitation. Medical assistance under the Refugee Medical Assistance Program will be limited to eight (8) consecutive months beginning with the month the refugee enters the United States. The eligibility period for a child born in the United States to parents receiving Refugee Medical Assistance expires when both of his parents with whom he is living are no longer eligible. ()

02. Medical Only. A refugee is not required to apply for or receive Cash Assistance as a condition of eligibility for Refugee Medical Assistance. Denial or closure of Refugee Cash Assistance is not a reason to deny or close Refugee Medical Assistance. ()

03. Refugee Cash Assistance Excluded. Refugee Cash Assistance is excluded from income and resources when determining eligibility for Refugee Medical Assistance. ()

04. Automatic Eligibility. Refugees whose countable income does not exceed one hundred fifty percent (150%) of the Federal Poverty Guidelines are automatically eligible for Refugee Medical Assistance. ()

05. Refugee Medical Assistance with "Spend Down." An applicant for Refugee Medical Assistance whose countable income exceeds one hundred fifty percent (150%) FPG for his family size may become eligible for Refugee Medical Assistance under certain conditions. A special provision, for refugees only, will allow those refugees whose income exceeds one hundred fifty percent (150%) FPG for his family size to subtract his medical costs from his income and thus "spend down" to the FPG limit for his family size. This "spend down" will be determined on a quarterly basis; the quarter begins with the month of application. The amount by which the refugee's income exceeds one hundred fifty percent (150%) FPG for his family size on a monthly basis is determined by:

a. Using the best estimate of income to be received during the quarter; and ()

b. Multiplying the monthly excess by three (3) to determine the quarterly "spend down." ()

06. Counting Income and Resources for Refugee Medical Assistance with a "Spend Down." ()

a. Income and resources are counted or excluded in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." The sole exception is that Refugee Cash Assistance is excluded from income and resources when determining eligibility for Refugee Medical Assistance. ()

b. The Federal Poverty Guideline applicable for the size of the family determines the amount to which an individual or family must "spend down" to be eligible for Refugee Medical Assistance. ()

c. Total countable resources for the family must not exceed one thousand dollars (\$1,000). ()

d. Financial resources that are not available to the refugee, including resources remaining in his homeland, can not be considered in determining eligibility for Refugee Medical Assistance. ()

e. The income and resources of sponsors, and the in-kind services and shelter provided to refugees by their sponsors, will not be considered in determining eligibility for Refugee Medical Assistance. A shelter allowance must not be given for any in-kind shelter provided. ()

07. Financially Responsible Relatives. ()

a. The Department must consider the income and resources of nonrefugee spouses or parents as available to the refugee whether or not they are actually contributed, if they live in the same household. ()

b. If the nonrefugee spouse or parent does not live with the individual, the Department must consider income and resources that are actually contributed by the spouse or parent as available to the refugee. ()

08. Deduction of Incurred Medical Expenses. If countable income exceeds one hundred fifty percent (150%) of the Federal Poverty Guidelines for the family size, the Department must deduct from income, in the following order, incurred medical expenses that are not subject to payment by a third party: ()

a. Medicare premiums, other health insurance premiums, deductibles, or coinsurance charges incurred by the individual, family, or financially responsible relatives. ()

b. Expenses incurred by the individual, family, or financially responsible relatives for necessary medical and remedial services not covered under the scope of the Medical Assistance Program. ()

c. Expenses incurred by the individual, family, or financially responsible relatives for necessary medical and remedial services covered in the scope of the Medical Assistance Program. ()

d. On a case by case basis, the Department may set reasonable limits on expenses to be deducted from income under Subsections 150.08.a. and 150.08.b. of this rule. ()

09. Determining Eligibility for Refugee Medical Assistance for Refugees Who Must Meet a “Spend Down.” The refugee applicant must provide verification of expenses incurred pursuant to Subsection 150.08 of this rule. If the applicant has medical coverage from a third party, he must verify that charges will not be paid by this third party by providing an Explanation of Benefits or other written statement from the third party. ()

a. As the applicant submits medical expenses, the charges should be added in the order listed in Subsection 150.08 of this rule. The expenses that come under Subsection 150.08.c must be put in chronological order by the date of service. ()

b. When the charges equal or exceed the amount of the “spend down,” the applicant becomes eligible for Refugee Medical Assistance. ()

c. The date of eligibility is the date of service on the last bill which is covered under the scope of the Medical Assistance Program. ()

d. It is the responsibility of the Department caseworker who is determining the applicant’s eligibility to determine when the “spend down” has been met. ()

10. Issuing a Medical Card to a Refugee Who Must Meet a “Spend Down.” A Medical Card will not be issued until the applicant has met the “spend down.” The dates on the Medical Card under “Valid Only During” will be the date the applicant becomes eligible for Medicaid benefits “to” the last day of the last month in the quarter for which the “spend down” has been determined. ()

11. Continued Coverage. If a refugee who is receiving Refugee Medical Assistance receives earnings from employment, the earnings do not affect the refugee’s continued eligibility for Refugee Medical Assistance. Once a refugee begins receiving Refugee Medical Assistance, he continues to receive it through his eighth month in the United State. ()

151. -- 199. (RESERVED).

200. ASSISTANCE TO CUBAN AND HAITIAN ENTRANTS.

01. Eligibility. Except as otherwise provided in Section 200, Refugee Medical Assistance must be provided to Cuban and Haitian entrants under the same conditions, and to the same extent as such assistance is provided to refugees. ()

02. Period of Eligibility. The number of months during which an entrant may be eligible for Refugee Medical Assistance under the Cuban/Haitian Entrant Program must be counted starting with the first month in which an individual entrant was first issued documentation by the USCIS indicating: ()

a. The entrant has been granted parole; or ()

b. The entrant is in voluntary departure status; or ()

c. The entrant's residence in the United States is known by USCIS. ()

201. -- 299. (RESERVED).

300. SPONSORSHIP.

01. Providing Name of Resettlement Agency. A refugee must provide the name of his resettlement agency as a condition of eligibility for the Refugee Medical Assistance Program. ()

02. Resettlement Agency and Sponsor Notification. Whenever a refugee applies for cash or medical assistance for which total or partial reimbursement is provided by the Office of Refugee Resettlement, the Department must promptly notify the resettlement agency (or its local affiliate) that provided for the initial resettlement of the refugee. ()

03. Contact. In determining a refugee's eligibility for medical assistance, the Field Office must contact the refugee's sponsor or resettlement agency and obtain financial information, including verification of the amount of financial assistance the sponsor or resettlement agency is providing to the refugee. ()

301. -- 399. (RESERVED).

400. INCOME AND RESOURCES ON DATE OF APPLICATION.

Eligibility is determined using income and resources on the date of application. Income is not averaged over the application processing period. ()

401. TRANSITION TO REFUGEE MEDICAL ASSISTANCE.

A refugee is transitioned from Medicaid to Refugee Medical Assistance, if he is within eight (8) months following his entry into the United States, and loses Medicaid because of earnings from employment. The transition to Medicaid coverage is made without a Refugee Medical Assistance eligibility determination. In such cases, the income limits under Section 150 of these rules do not apply. ()

402. -- 599. (RESERVED).

600. RELATIONSHIP TO SUPPLEMENTAL SECURITY INCOME (SSI).

Each refugee who receives Refugee Medical Assistance and is sixty-five (65) or older, or aged, blind, or disabled, must be immediately referred to the Social Security Administration to apply for SSI benefits. ()

601. -- 699. (RESERVED).

700. OVERPAYMENTS AND RESTORATION OF BENEFITS.

Policy governing recovery of overpayments and restoration of benefits of Refugee Medical Assistance is contained in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ()

702. -- 799. (RESERVED).

800. CASE RECORD INFORMATION.

The following information must be recorded in case records of refugees in addition to documentation required by IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ()

01. Registration Number. Passport or alien registration number from INA Form I-94; ()

02. Date of Entry. Month and year of entry into the United States. The receipt of benefits under the Refugee Medical Assistance Program will be limited to eight (8) months from the date of entry into the United States; ()

03. Nationality. Country in which the refugee was living and fled because of persecution or fear or persecution; ()

04. Resettlement Agency. Name of the resettlement agency; ()

05. Sponsor. Name and address of the sponsor; and ()

06. Initial Settlement. Name(s) of the State(s) from which he moved and in which he initially settled, if a refugee initially settled in another State or States prior to moving to Idaho. ()

801. -- 994. (RESERVED).

995. PROVISIONS CONTINGENT UPON FEDERAL FUNDING.

The provisions in Sections 000 through 995 of these rules, are contingent upon availability and receipt of funds appropriated through federal legislation. When federal funds are not available to the State of Idaho, these provisions, or any part therein, will not be in force and operation of the Refugee Medical Assistance Program in Idaho will be suspended. Advance notice of termination or reduction of benefits is not required. ()

996. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

DOCKET NO. 16-0308-0701

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 Wednesday, October 17, 2007.

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 Department proposes to align the methodology used to calculate income for self-employed individuals who apply for Temporary Assistance for Families in Idaho (TAFI) cash assistance with that used in the Food Stamp rules. Use of the same methodology will: (1) simplify the process for determining income for self-employed individuals who are applying for TAFI and Food Stamps, and (2) reduce the opportunity for errors that may occur when different methods are used to determine eligibility for these two programs.

The proposed rule change aligns the methodology for calculating self-employment income for TAFI eligibility with that used in the Food Stamp Program. The new TAFI methodology uses a standard 50% deduction from gross income instead of using gross receipts minus allowable expenses.

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 fiscal impact to the state general fund associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted since these rules are being changed to standardize TAFI eligibility determination by aligning the methodology for calculating self-employment income for TAFI eligibility with that used in the Food Stamp Program.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner (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 Wednesday, October 24, 2007.

DATED this 22nd day of August, 2007.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0701

229. CALCULATION OF NON-SEASONAL AND SEASONAL SELF-EMPLOYMENT INCOME.

Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the income, if the amount is expected to continue. Self-employment income must be calculated by one (1) of the methods listed in Subsections 229.01 and 229.02. In determining eligibility for the Temporary Assistance for Families in Idaho (TAFI) Program, the Department counts self-employment business income. (7-1-98)(____)

01. Non-Seasonal Self-Employment at Least One Year. *For individuals who are self-employed for at least one (1) year, income and expenses are averaged over the past twelve (12) months. If the non-seasonal self-employment is considered annual income by the household, the Department will average the self-employment income over a twelve-month (12) period, even if it is received over a short time period and the household receives income from other sources in addition to self-employment.* (7-1-98)(____)

02. Seasonal Self-Employment Less Than One Year. *For individuals who are self-employed for less than one (1) year, income and expenses are averaged over the period of time the business has been in operation. Seasonally self-employed households only receive income from self-employment during part of the year. If the self-employment income is used to meet the household's needs for only part of the year, the Department will average the seasonal self-employment income over the period of time the income is used.* (7-1-98)(____)

230. DETERMINING THE STANDARD DEDUCTION FOR SELF-EMPLOYMENT ALLOWABLE EXPENSES INCOME.

Operating expenses deducted from self-employment income are listed in Subsections 230.01 through 230.16. The Department determines net self-employment income for a business by subtracting fifty percent (50%) from the gross income as an allowable standard deduction for self-employment income. (7-1-98)(____)

- 01. Labor.** *Labor paid to individuals not in the family.* (7-1-98)
- 02. Materials.** *Materials such as stock, seed and fertilizer.* (7-1-98)
- 03. Rent.** *Rent on business property.* (7-1-98)
- 04. Interest.** *Interest paid to purchase income producing property.* (7-1-98)
- 05. Insurance.** *Insurance paid for business property.* (7-1-98)
- 06. Taxes.** *Taxes on income producing property.* (7-1-98)
- 07. Business Transportation.** *Business transportation as defined by the IRS.* (7-1-98)
- 08. Maintenance.** *Landscape and grounds maintenance.* (7-1-98)
- 09. Lodging.** *Lodging for business related travel.* (7-1-98)
- 10. Meals.** *Meals for business related travel.* (7-1-98)
- 11. Use of Home.** *Costs of partial use of home for business.* (7-1-98)
- 12. Legal.** *Legal fees for business related issues.* (7-1-98)
- 13. Shipping.** *Shipping for business related costs.* (7-1-98)
- 14. Uniforms.** *Business related uniforms.* (7-1-98)

- ~~15. Utilities. Utilities for business property. (7-1-98)~~
~~16. Advertising. Business related advertising. (7-1-98)~~

231. DETERMINING SELF-EMPLOYMENT ~~EXPENSES NOT ALLOWED~~ INCOME.

~~Self-employment expenses not allowed are listed in Subsections 231.01 through 231.09. The Department determines self-employment income by adding projected monthly income to projected capital gains and subtracting the standard deduction for self-employment income. (7-1-98)(____)~~

~~01. **Payments on the Principal of Real Estate Determination of Gross Monthly Income.** Payments on the principal of real estate mortgages on income producing property. If no income fluctuations are expected, the Department will project the average gross monthly income for the certification period. If past income is not reflective of expected future income, the Department will make a proportionate adjustment to the expected gross monthly income. The Department will determine the gross monthly income of a self-employed person using one (1) of the following: (7-1-98)(____)~~

~~a. If tax returns are available, the information on the return will be used to determine an appropriate average gross monthly income amount. The Department will verify that the tax return reflects a full twelve (12) months of self-employment; or (____)~~

~~b. If no tax return is available, the self-employment income will be averaged over the period of time the self-employment business enterprise has been in operation. (____)~~

~~02. **Purchase of Addition of Monthly Capital Assets or Durable Goods Gains Income.** Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items. Capital gains include profit from the sale or transfer of capital assets used in self-employment. (7-1-98)(____)~~

~~a. The Department will calculate capital gains using the federal income tax method; (____)~~

~~b. The Department will determine if the household expects to receive any capital gains income from self-employment assets during the certification period; and (____)~~

~~c. The Department will add this amount to the monthly income to determine the gross monthly income, in accordance with Subsection 231.01 of this rule. (____)~~

~~03. **Taxes Subtraction of the Standard Deduction for Self-Employment Income.** Federal, state, and local income tax. The Department will subtract fifty percent (50%) of the gross monthly income as a standard deduction for self-employment income. This is the projected self-employment monthly income. (7-1-98)(____)~~

~~04. Savings. Monies set aside for future use such as retirement or work related expenses. (7-1-98)~~

~~05. Depreciation. Depreciation for equipment, machinery, or other capital investments. (7-1-98)~~

~~06. Labor Paid to Family Member. Labor paid to a family member. (7-1-98)~~

~~07. Loss of Farm Income. Loss of farm income deducted from other income. (7-1-98)~~

~~08. Personal Transportation. Personal transportation. (7-1-98)~~

~~09. Net Losses. Net losses from previous periods. (7-1-98)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0702

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), 56-203(g), and 56-257, 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 17, 2007.

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 rulemaking defines and describes the methodology used by the Department to determine reimbursement rates for new and existing Federally Qualified Health Centers (FQHCs), including when they make changes in the scope of services they provide.

In this rulemaking, the term "change in the scope of services" refers to such things as the addition of new services, deletion of existing services, or other changes in the scope or intensity of services offered by an FQHC that could change the maximum amount an FQHC may charge for each patient visit.

This rulemaking was done at the request of primary care industry stakeholders.

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 related to this rulemaking since the proposed rule amendments simply describe, but do not alter, the current methodology used to set FQHC reimbursement rates.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted on Monday, June 11, 2007, with representatives of the Idaho Primary Care Association. The Notice of Negotiated Rulemaking was published in the Wednesday, June 6, 2007, Idaho Administrative Bulletin, Vol. 07-6, page 68.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

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 24, 2007.

DATED this 15th day of August, 2007.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0702

830. **FEDERALLY QUALIFIED HEALTH CENTER (FQHC) SERVICES - DEFINITIONS.**

01. Change in Intensity of Services of an FOHC. A change in the intensity of services of an FOHC means a change in the quantity and complexity of services delivered that could change an FOHC's total allowable cost per encounter. This does not include an expansion or remodeling of an existing FOHC. This may include such things as the addition of new services or the deletion of existing services. ()

02. Encounter. An encounter, for FOHC payment purposes, is a face-to-face contact for the provision of medical/mental or dental services between a FOHC patient and a provider as specified in Subsections 832.01 through 832.07 of these rules. For the purposes of establishing encounter rates, the term "medical/mental" refers to a single category of service. ()

03. Encounter Rate. An encounter rate can be of two (2) types, either medical/mental or dental; either of these two (2) types can be either an interim rate or a finalized rate. An encounter rate is the total amount of annual costs for the type of encounter divided by the total number of encounters for that type of encounter for the FOHC's fiscal year. ()

a. Interim Encounter Rate. If the FOHC is new and historical cost information is not available, the Department sets the interim encounter rate using budgeted cost and encounter information submitted by the provider. If the FOHC is not able to obtain its financial budget information, the Department sets the interim encounter rate by referring to encounter rates paid to other FOHCs in the same or adjacent regional areas with similar caseloads. ()

b. Finalized Encounter Rate. If the FOHC is an existing facility and has at least twenty-four (24) consecutive months of historical cost and encounter information, the Department uses the second full twelve (12) month audited Medicare cost report to calculate a finalized encounter rate. ()

04. Federally Qualified Health Centers (FOHCs). Federally qualified health centers are defined in federal law at 42 U.S.C Section 1396d(1)(2), which incorporates the definition at 42 U.S.C Section 1395x(aa)(1), and includes community health centers, migrant health centers, ~~or~~ providers of care for the homeless, and outpatient health programs or clinics operated by a tribe or tribal organization under the Indian Self-Determination Act (P.L. 93-638); ~~and~~ It also includes clinics that qualify for, but are not actually receiving, grant funds according to Sections 329, 330, or 340 of the Public Health Service Act (42 USC Sections 201, et seq.) that may provide ambulatory services to medical assistance participants. (3-30-07)()

05. Medicare Cost Report Period. The period of time covered by the Medicare-required annual report of an FOHC's costs. ()

06. Medicare Economic Index (MEI). MEI is an annual measure of inflation designed to estimate the increase in the total cost for the average physician to operate a medical practice. The MEI takes into account cost categories such as a physician's own time, non-physician employees' compensation, rents, and medical equipment. The MEI is used in establishing the annual changes to the payment conversion factors used as part of the methodology for determining FOHC reimbursement rates. ()

(BREAK IN CONTINUITY OF SECTIONS)

835. **FEDERALLY QUALIFIED HEALTH CENTER (FQHC) SERVICES - REIMBURSEMENT METHODOLOGY.**

01. Payment. Payment for Federally Qualified Health Center and Rural Health Clinic services must be made in accordance with Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection

Act of 2000, P.L. 106-554, 42 USC Section 1396a(bb), Subsections (1) through (4). (3-30-07)

02. FOHC Encounter Limitations and Exceptions. *An encounter, for FOHC payment purposes, is a face-to-face contact for the provision of medical, mental, or dental service between a center patient and a provider as specified in Subsections 832.01 through 832.07 of these rules. FOHC encounters have the following limitations and exceptions to these limitations as described in Subsections 835.02.a. through 835.02.d. of this rule: (3-30-07)()*

a. Each contact with a separate discipline of health professional (medical, mental, or dental), on the same day at the same location, is considered a separate encounter. All contacts with all practitioners within a disciplinary category (medical, mental, or dental) on the same day is one (1) encounter. (3-30-07)()

b. Reimbursement for services is limited to three (3) encounters per participant per day. (3-30-07)

c. As an exception to Subsection 835.02.a. of ~~these~~ this rules, a second encounter with the same professional on the same day may be reimbursed; or (3-30-07)()

d. As an exception to Subsection 835.02.b. of ~~these~~ this rules, an additional encounter may be reimbursed, if the encounter is caused by an illness or injury that occurs later in time than the first encounter and requires additional diagnosis or treatment. (3-30-07)()

836. FEDERALLY QUALIFIED HEALTH CENTER (FOHC) SERVICES - RATE SETTING METHODOLOGY.

01. Prospective Payment System. ()

a. For rate periods beginning on January 1, 2001, the Department will establish separate, finalized rates for medical/mental encounters and for dental encounters. The Department will prospectively set these finalized encounter rates using the FOHC's medical/mental and dental encounter costs. ()

b. Beginning in federal fiscal year 2002, and for each federal fiscal year thereafter, the Department will pay each FOHC an encounter rate equal to the amount paid in the previous federal fiscal year. For the period starting with federal fiscal year 2002 and thereafter, the Department will adjust the encounter rate for inflation using the Medicaid Economic Index (MEI), as published by CMS. For both medical/mental encounters and dental encounters, FOHCs are paid on a per encounter basis, with the limitations and exceptions described under Subsection 835.02 of these rules. ()

c. If an out-of-state FOHC becomes an Idaho Medicaid provider and provides less than one hundred (100) Idaho Medicaid encounters or receives less than ten thousand dollars (\$10,000) in Idaho Medicaid payments in the first year after entering the program, the Department will deem the FOHC a low utilization provider. The finalized encounter rate for low utilization providers will be the same as the interim encounter rate as defined in Subsection 836.02.a. of this rule. If there is an increase in either the number of encounters or in the amount of payments over any twelve (12) month Medicare cost report period, the Department reserves the right to audit a low utilization provider's Medicare cost report in order to set a new interim encounter rate as defined in Subsection 836.02.a. of this rule. ()

02. FOHCs That Become Idaho Medicaid Providers. ()

a. If the FOHC is new and encounter rate information for other FOHCs in the same or adjacent regional areas with similar caseloads is not available, the Department will set the interim encounter rate using historical cost information. If historical cost information is not available, the Department will use budgeted cost and encounter information submitted by the provider. If the FOHC is not able to provide its financial budget information, the Department will set the interim encounter rate by referring to encounter rates paid to other FOHCs in the same or adjacent regional areas with similar caseloads. Regional areas are defined by the Department. ()

b. If the FOHC has been designated as an FOHC for at least twenty-four (24) consecutive months and provides the historical cost and encounter information for this period to the Department, the Department will use the second full twelve (12) month audited Medicare cost report to calculate a finalized encounter rate. The Department

will provide the FOHCs a supplemental information worksheet to complete. This worksheet will be used by the Department to identify dental encounters and other incidental costs related to either medical/mental or dental FOHC encounters. ()

c. For both new and existing FOHCs that become Idaho Medicaid providers, the Department will audit the Medicare cost report for the twenty-four (24) consecutive months that represent two (2) complete fiscal years after the FOHC has become a Medicaid provider. The Department will also audit the Medicare cost report for any partial year prior to the twenty-four (24) consecutive months. ()

d. For both new and existing FOHCs that become Idaho Medicaid providers, the Department will adjust the finalized encounter rate annually for inflation in accordance with Subsection 836.01.b. of this rule. ()

e. The Department will adjust the claim payments for all FOHC claims paid at the interim encounter rate(s). These adjustments will reflect the payment at the finalized encounter rate(s). The Department will pay the FOHC for any total adjustment amount over what was reimbursed. The FOHC must pay the Department for any total adjustment amount that is under what was reimbursed. ()

03. Change in an FOHC Encounter Rate Due to a Change in the FOHC's Scope of Services. ()

a. After an FOHC obtains approval for a change in scope of service from the federal Human Resources and Services Administration (HRSA), Bureau of Primary Healthcare, the FOHC must request the Department to review the encounter rate(s) for the FOHC. The review will include reviewing the addition of a new service(s), deletion of an existing service(s), or other changes in the intensity of services offered by an FOHC that could change an FOHC's total cost per encounter. The FOHC must request the Department to review the encounter rate(s) within sixty (60) days after the FOHC has gained approval from the HRSA Bureau of Primary Health Care for a change in scope of service. The Department requires the same supporting documentation required by the HRSA Bureau of Primary Health Care. ()

b. When an FOHC does not have to file a change in scope of service with the HRSA Bureau of Primary Health Care, but plans an increase or decrease in the intensity of services to be offered that will result in a change the FOHC's scope of services, the FOHC must request the Department to review the request for a change in intensity and determine if there will be an increase or decrease in the encounter rate(s) for the FOHC. The Department will review the request for a change in intensity within 60 (sixty) days of the planned change in intensity of services. ()

c. The Department reserves the right to audit the Medicare cost report and recalculate the encounter rates when the FOHC has reported a change in scope of service. ()

d. The Department will determine the encounter rate in accordance with Subsection 836.02 of this rule when the FOHC has reported a change in scope of service. The Department will audit and cost settle the most recent twenty-four (24) consecutive months of Medicare cost reports following any change(s) in an FOHC's scope of service. The Department will also audit the Medicare cost report for any partial year prior to the twenty-four (24) consecutive months. The finalized encounter rate(s) for both medical/mental and dental encounters will be recalculated and audited using the Medicare cost report for the second full twelve (12) month period. ()

04. Annual Filing Requirements. Each provider is required to file a copy of its Medicare cost report on an annual basis. Department deadlines are the same as those imposed by Medicare. ()

05. Quarterly Supplemental Payments. In the case of any FOHC that contracts with a managed care organization, the Department will make quarterly supplemental payments to the FOHC for the difference between the payment amounts paid by the managed care organization and the amount to which the FOHC is entitled under the prospective payment system for Medicaid participants. ()

8367. -- 841. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0703

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), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and Title XIX and Title XXI of the Social Security Act, as amended, and the companion federal regulations.

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 17, 2007.

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 rulemaking revises the definition to clarify that the floor calculation for hospitals with more than forty beds is 81.5% of Medicaid costs, and the floor calculation for hospitals with forty or fewer beds is 96.5% of Medicaid costs.

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: Informal negotiated rulemaking was conducted on May 2, 2007 with the Nursing Home Prospective Payment System Oversight Committee.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

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 24, 2007.

DATED this 15th day of August, 2007.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
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kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0309-0703

400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.

01. Administratively Necessary Day (AND). An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled discharge of an inpatient. (3-30-07)

02. Allowable Costs. The current year's Medicaid apportionment of a hospital's allowable costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

03. Apportioned Costs. Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

04. Capital Costs. For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

05. Case-Mix Index. The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

06. Charity Care. Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

07. Children's Hospital. A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

08. Current Year. Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

09. Customary Hospital Charges. Customary hospital charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. No more than ninety-six and a half percent (96.5%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. (3-30-07)

10. Disproportionate Share Hospital (DSH) Allotment Amount. The DSH allotment amount determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

11. Disproportionate Share Hospital (DSH) Survey. The DSH survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

12. Disproportionate Share Threshold. The disproportionate share threshold is: (3-30-07)

a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)

- b.** A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)
- 13. Excluded Units.** Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)
- 14. Hospital Inflation Index.** An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)
- 15. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)
- a.** Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)
- b.** The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)
- 16. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)
- 17. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term "inpatient days" includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH threshold computations. (3-30-07)
- 18. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)
- 19. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (3-30-07)
- 20. Operating Costs.** For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (3-30-07)
- 21. Other Allowable Costs.** Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs. (3-30-07)

22. Principal Year. The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived. (3-30-07)

a. For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement. (3-30-07)

b. For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003 and every subsequent fiscal year-end in which a finalized Medicare cost report, or its equivalent, is prepared for Medicaid cost settlement. (3-30-07)

23. Public Hospital. For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)

24. Reasonable Costs. Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit. (3-30-07)

25. Reimbursement Floor Percentage. ~~The percentage of allowable Medicaid costs guaranteed to all hospitals licensed and Medicare certified for State Fiscal Year Ending November 1, 2002, and thereafter — eighty one and a half percent (81.5%).~~ The floor calculation for hospitals with more than forty (40) beds is eighty-one and a half percent (81.5%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety-six and a half percent (96.5%). (3-30-07)(____)

26. TEFRA. TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

27. Uninsured Patient Costs. For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient. (3-30-07)

28. Upper Payment Limit. The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0704

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), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and Title XIX and Title XXI of the Social Security Act, as amended, and the companion federal regulations.

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 17, 2007.

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:

Because of newer technology and surgical procedures, surgically implantable hearing aids are becoming more common. The Department is adding new language to this rule stating the circumstances under which a surgically implanted hearing aid will be authorized. This rule change will state that authorization and coverage for the surgically implanted hearing aid will occur only after there is documented evidence that a non-implantable hearing aid cannot meet the medical needs of the participant. Also, a rule citation is being updated in the Early Periodic Screening, Diagnosis and Treatment Services (EPSDT) section of rule relating to hearing aids.

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 this rulemaking simply clarifies the procedures for prior authorization of a piece of medical equipment that is already being provided.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Siroky at (208) 364-1897.

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 24, 2007.

DATED this 20th day of August, 2007.

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THE FOLLOWING IS THE TEXT OF DOCKET 16-0309-0704

742. AUDIOLOGY SERVICES - COVERAGE AND LIMITATIONS.

The Department will pay for audiometric services and supplies in accordance with the following guidelines and limitations: (3-30-07)

01. Non-Implantable Hearing Aids. When there is a documented hearing loss of at least thirty (30) decibels based on the standard Pure Tone Average (500, 1000, 2000 hertz), ~~the~~ Department will cover the purchase of one (1) non-implantable hearing aid per participant per lifetime with the following requirements and limitations: (3-30-07)()

~~**a.** The following information must be documented and kept on file with the provider: the participant's diagnosis, the results of the basic comprehensive audiometric exam which includes pure tone, air and bone conduction, speech reception threshold, most comfortable loudness, discrimination and impedance testing, the brand name and model type needed. However, the Department will allow medical doctors to forego the impedance test based on their documented judgement.~~ (3-30-07)

ba. Covered services included with the purchase of the hearing aid include proper fitting and refitting of the ear mold or aid, or both, during the first year, instructions related to the aid's use, and extended insurance coverage for two (2) years. (3-30-07)

eb. The following services may be covered in addition to the purchase of the hearing aid: batteries purchased on a monthly basis, follow-up testing, necessary repairs resulting from normal use after the second year, and the refitting of the hearing aid or additional ear molds no more often than forty-eight (48) months from the last fitting. (3-30-07)

ec. Lost, misplaced, stolen or destroyed hearing aids are the responsibility of the participant. The Department has no responsibility for the replacement of any hearing aid. In addition, the Department has no responsibility for the repair of hearing aids that have been damaged as a result of neglect, abuse or use of the aid in a manner for which it was not intended. (3-30-07)

02. Implantable Hearing Aids. The Department may cover a surgically implantable hearing aid when: ()

a. There is a documented hearing loss as described in Subsection 742.01 of this rule; ()

b. Non-implantable options have been tried, but have not been successful; and ()

c. The Department has determined that a surgically implanted hearing aid is medically necessary through the prior authorization process. The Department will consider the guidelines of private and public payors, evidence-based national standards or medical practice, and the medical necessity of each participant's case. ()

03. Provider Documentation Requirements. The following information must be documented and kept on file by the provider: ()

a. The participant's diagnosis; ()

b. The results of the basic comprehensive audiometric exam which includes pure tone, air and bone conduction, speech reception threshold, most comfortable loudness, discrimination and impedance testing; and ()

c. The brand name and model type of the hearing aid needed. ()

04. Allowance to Waive Impedance Test. The Department will allow a medical doctor to waive the impedance test based on his documented judgment. ()

(BREAK IN CONTINUITY OF SECTIONS)

882. EARLY PERIODIC SCREENING, DIAGNOSIS AND TREATMENT SERVICES (EPSDT) SERVICES - COVERAGE AND LIMITATIONS.

01. Additional Services. Any service required as a result of an EPSDT screen and which is currently covered under the scope of the Idaho Medicaid program will not be subject to the existing amount, scope, and duration, but will be subject to the authorization requirements of those rules. (3-30-07)

02. Services Must Be Medically Necessary. The need for additional services must be documented by the attending physician as medically necessary. (3-30-07)

03. Prior Authorization. Any service requested, that is covered under Title XIX or Title XXI of the Social Security Act, that is not identified in these rules specifically as a Medicaid-covered service will require prior authorization prior to payment for that service. (3-30-07)

04. Services Not Covered. The Department will not cover services for cosmetic, convenience, or comfort reasons. (3-30-07)

05. Hearing Aids Under EPSDT. (3-30-07)

a. When binaural aids are requested they will be authorized if documented to the Department's satisfaction, that the child's ability to learn would be severely restricted. (3-30-07)

b. When replacement hearing aids are requested, they may be authorized if the requirements in Subsections ~~742.01.a.~~ ~~through 742.01.b.~~ and 742.03 are met. (~~3-30-07~~)()

c. The Department will purchase additional ear molds after the initial six (6) months to one (1) year period if medically necessary. Requests in excess of every six (6) months will require prior authorization and documentation of medical need from either the attending physician or audiologist. (3-30-07)

06. Eyeglasses Under EPSDT. (3-30-07)

a. In the case of a major visual change, the Department can authorize purchase of a second pair of eyeglasses and can authorize a second eye examination to determine that visual change. (3-30-07)

b. The Department may pay for replacement of lost glasses or replacement of broken frames or lenses. New frames will not be purchased if the broken frame can be repaired for less than the cost of new frames if the provider indicates one (1) of these reasons on his claim. If repair costs are greater than the cost of new frames, new frames may be authorized. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0705

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

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), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and Title XIX and Title XXI of the Social Security Act, as amended, and the companion federal regulations.

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

Wednesday, October 10, 2007 -- 4:00 p.m.
Division of Medicaid
Conference Room "D" East
3232 Elder Street, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking adds a Chronic Disease Management benefit for Medicaid participants with certain chronic diseases. The benefit will be phased in and the specific diseases will initially include: diabetes; asthma; hypertension; hyperlipidemia, and depression.

Primary care providers who participate in the Healthy Connections program and who also enroll in the Chronic Disease Management program receive an enhanced case management fee for effectively managing their Medicaid patients' chronic disease. To receive the enhanced fee, the provider must identify the patients with the targeted disease and report specified evidence-based quality indicators to the Department. The required reporting criteria differ by disease and are determined by the Department. This rulemaking adds the methodology for determining the reporting requirements for each chronic disease.

Additionally, this rulemaking removes the requirement that a Healthy Connections referral must be made for the following services: anesthesiology services, laboratory (including pathology), and radiology services.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)c, Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit to Medicaid participants because it is beneficial to their health outcomes.

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 this rulemaking confers a benefit to Medicaid participants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the 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 24, 2007.

DATED this 22nd day of August, 2007.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET 16-0309-0705

560. HEALTHY CONNECTIONS - DEFINITIONS.

For purposes of this Sub Area, unless the context clearly requires otherwise, the following words and terms have the following meanings: (3-30-07)

- 01. Best Practices Protocol.** A regimen of proven, effective and evidence-based practices. (4-1-07)T
- 02. Chronic Disease Management.** The process of applying best practices protocol to manage a chronic disease in order to produce the best health outcomes for a participant with the targeted chronic disease. (4-1-07)T
- 043. Clinic.** Two (2) or more qualified medical professionals who provide services jointly through an organization for which an individual is given authority to act on its behalf. It also includes Federally Qualified Health Centers (FQHCs), Certified Rural Health Clinics, and Indian Health Clinics. (3-30-07)
- 024. Covered Services.** Those medical services and supplies for which reimbursement is available under the State Plan. (3-30-07)
- 035. Grievance.** The formal process by which problems and complaints related to Healthy Connections are addressed and resolved. Grievance decisions may be appealed as provided herein. (3-30-07)
- 046. Healthy Connections.** The provision of health care services through a single point of entry for the purposes of managing participant care with an emphasis on preventative and primary care and reducing inappropriate utilization of services and resulting costs. This is sometimes referred to as "managed care." Healthy Connections is a primary care case management model. (3-30-07)(4-1-07)T
- 05. Plan.** ~~The area specific provisions, requirements and procedures related to Healthy Connections.~~ (3-30-07)
- 07. Pay-for-Performance.** The use of incentives to encourage and reinforce the delivery of evidence-based practices that promote better outcomes as efficiently as possible. (4-1-07)T
- 068. Primary Care Case Management.** The process in which a ~~physician~~ primary care provider is responsible for direct care of a participant, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the participant. (3-30-07)(4-1-07)T
- 079. Primary Care Case Manager Provider (PCP).** ~~A primary care physician~~ qualified medical professional who contracts with Medicaid to coordinate the care of certain participants. (3-30-07)(4-1-07)T
- 0810. Qualified Medical Professional.** A duly licensed physician in the following specialties: Pediatrics,

Internal Medicine, Family Practice, General Practice, General Surgery, Obstetrics/Gynecology, or a physician in any other specialty who chooses to assume the function of primary care case management. It also includes nurse practitioners, and physician assistants. Licenses must be held in the state(s) where services are being rendered.

(3-30-07)

0911. Referral. The process by which participants gain access to those covered services subject to primary care case management, but not provided by the primary care provider. It is the authorization for such services.

(3-30-07)

12. Targeted Chronic Disease. One (1) of the diseases included in the chronic disease management pay-for-performance program. The specific targeted chronic diseases are diabetes, asthma, hypertension, hyperlipidemia, and depression. The Department may change the diseases included in the program after appropriate notification to PCPs.

(4-1-07)T

561. HEALTHY CONNECTIONS - PARTICIPANT ELIGIBILITY.

01. Voluntary County. In a ~~voluntary~~ county where participation in Healthy Connections is voluntary, the participant will be given an opportunity to choose a ~~primary care provider~~ PCP. If the participant is unable to choose a provider but wishes to participate, a provider will be assigned by the Department. If a voluntary county subsequently becomes a mandatory county, provider selection and assignment will remain unchanged where possible.

~~(3-30-07)~~(4-1-07)T

02. Mandatory County. In a ~~mandatory~~ county where participation in Healthy Connections is mandatory, a ~~provider~~ PCP will be assigned if the participant fails to choose a participating provider after given the opportunity to do so. Members of the same family do not have to choose the same provider. All participants in the county are required to participate unless individually granted an exception. Exceptions from participation in a mandatory county are available for participants who:

~~(3-30-07)~~(4-1-07)T

- a. Have to travel more than thirty (30) miles, or thirty (30) minutes to obtain primary care services; (3-30-07)
- b. Have an eligibility period that is less than three (3) months; (3-30-07)
- c. Have an eligibility period that is only retroactive; (3-30-07)
- d. Are eligible only as Qualified Medicare Beneficiary; (3-30-07)
- e. Have an existing relationship with a primary care physician or clinic who is not participating with the Healthy Connections; or (3-30-07)
- f. Has incompatible third party liability. (3-30-07)
- g. Are enrolled in the Medicare/Medicaid Coordinated Plan. (4-1-07)T

562. HEALTHY CONNECTIONS - COVERAGE AND LIMITATIONS.

01. Exempted Services. All services are subject to primary care case management unless specifically exempted. The following services are exempt: (3-30-07)

- a. Family planning services; (3-30-07)
- b. Emergency care (as defined by the Department for the purpose of payment and performed in an emergency department); (3-30-07)
- c. Dental care ~~(performed in the office)~~; ~~(3-30-07)~~(4-1-07)T
- d. Podiatry (performed in the office); (3-30-07)

- e. Audiology (hearing tests or screening, does not include ear/nose/throat services); (3-30-07)
- f. Optical/Ophthalmology/Optomtrist services (performed in the office); (3-30-07)
- g. Chiropractic (performed in the office); (3-30-07)
- h. Pharmacy (prescription drugs only); (3-30-07)
- i. Nursing home; (3-30-07)
- j. ICF/MR services; (3-30-07)
- k. ~~Childhood~~ Immunizations (not requiring an office visit); ~~(3-30-07)~~(4-1-07)T
- l. Flu shots and/or pneumococcal vaccine (not requiring an office visit); (3-30-07)
- m. Diagnosis and/or treatment for sexually transmitted diseases; (3-30-07)
- n. One screening mammography per calendar year for women age forty (40) or older; (3-30-07)
- o. Indian Health Clinic/638 Clinic services provided to individuals eligible for Indian Health Services; ~~(3-30-07)~~(4-1-07)T
- p. In-home services, known as Personal Care Services and Personal Care Services Case Management; ~~(3-30-07)~~(4-1-07)T
- q. Laboratory services, including pathology; (4-1-07)T
- r. Anesthesiology services; and (4-1-07)T
- s. Radiology services. (4-1-07)T

02. Change in Services That Require a Referral. The Department may change the services that require a referral after appropriate notification of Medicaid eligible individuals and providers. (3-30-07)

563. HEALTHY CONNECTIONS - PROCEDURAL REQUIREMENTS.

01. Primary Care Case Management. Under the Healthy Connections model of managed care, each participant obtains medical services through a ~~single primary care provider~~ PCP. This provider either provides the needed service, or makes a referral for needed services. This management function neither reduces nor expands the scope of covered services. ~~(3-30-07)~~(4-1-07)T

a. Referrals. The primary care provider is responsible for making all reasonable efforts to monitor and manage the participant's care, providing primary care services, and making referrals for services when medically necessary. All services not specifically exempted in Section 562 of these rules require a referral. Services that require referral, but are provided without a referral will not be paid. All referrals must be documented in participant's patient record. (3-30-07)

b. Changing ~~Providers~~ PCPs. If a participant is dissatisfied with his ~~provider~~ PCP, he may change providers effective the first day of any month by contacting his designated Healthy Connections Representative to do so no later than fifteen (15) days in advance. This advance notice requirement may be waived by the Department. ~~(3-30-07)~~(4-1-07)T

c. Changing Service Areas. Participants who move from the area where they are enrolled must disenroll in the same manner as provided in the preceding paragraph for changing ~~providers~~ PCPs, and may obtain a referral from their ~~primary care provider~~ PCP pending the transfer. Such referrals are valid not to exceed thirty (30)

days.

~~(3-30-07)~~(4-1-07)T

02. Problem Resolution.

(3-30-07)

a. Intent. To help assure the success of Healthy Connections, the Department intends to provide a mechanism for timely and personal attention to problems and complaints related to the program. (3-30-07)

b. Local Program Representative. To facilitate problem resolution, each area will have a designated representative who will receive and attempt to resolve all complaints and problems related to the ~~plan~~ program and function as a liaison between participants and providers. It is anticipated that most problems and complaints will be resolved informally at this level. ~~(3-30-07)~~(4-1-07)T

c. Registering a Complaint. Both participants and providers may register a complaint or notify the Department of a problem related to Healthy Connections either by writing or telephoning the local program representative. The health representative will attempt to resolve conflicts and disputes whenever possible and refer the complainant to alternative forums where appropriate. (3-30-07)

d. Grievance. If a participant or provider is not satisfied with the resolution of a problem or complaint addressed by the program representative, he may file a formal grievance in writing to the representative. The manager of the managed care program may, where appropriate, refer the matter to a review committee designated by the Department to address issues such as quality of care or medical necessity. However, such decisions are not binding on the Department. The Department will respond in writing to grievances within thirty (30) days of receipt. (3-30-07)

e. Appeal. Decisions in response to grievances may be appealed. Appeals by participants are considered as fair hearings and appeals by providers as contested cases under the Rules Governing Contested Case Proceedings and Declaratory Rulings, IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," and must be filed in accordance with the provisions of that chapter. (3-30-07)

03. Chronic Disease Management Registration. A participating PCP must initially register each participant eligible for chronic disease management reimbursement with the Department. (4-1-07)T

04. Chronic Disease Management Reporting. A participating PCP must annually report on all identified quality indicators for each targeted chronic disease that he seeks reimbursement as specified in the provider agreement. The reporting schedule is established by the Department in the provider agreement. (4-1-07)T

564. HEALTHY CONNECTIONS - PROVIDER QUALIFICATIONS AND DUTIES.

01. Provider Participation Qualifications. Primary care case management services may be provided by qualified medical professionals, licensed to practice in the state where services are being rendered. (3-30-07)

02. Provider Participation Conditions and Restrictions.

(3-30-07)

a. Quality of Services. Provider must maintain and provide services in accordance with community standards of care. Provider must exercise his best efforts to effectively control utilization of services. Providers must provide twenty-four (24) hour coverage by telephone to assure participant access to services. (3-30-07)

b. Provider Agreements. Providers participating in primary care case management must sign an agreement. Clinics may sign an agreement on behalf of their qualified medical professionals. Providers participating in the chronic disease management pay-for-performance program must sign an addendum to the primary care case management provider agreement. ~~(3-30-07)~~(4-1-07)T

c. Patient Limits. Providers may limit the number of participants they wish to manage. Subject to this limit, the provider must accept all participants who either elect or are assigned to provider, unless disenrolled in accordance with Subsection 564.02.d. of this rule. Providers may change their limit effective the first day of any month by written request thirty (30) days prior to the effective date of change. Requirement maybe waived by the Department. (3-30-07)

d. Disenrollment. Instances may arise where the provider-patient relationship breaks down due to failure of the participant to follow the plan of care or for other reasons. Accordingly, a provider may choose to withdraw as participant's primary care provider effective the first day of any month by written notice to the participant and the Department thirty (30) days prior to the date of withdrawal. This advance notice requirement may be waived by the Department. (3-30-07)

e. Record Retention. Providers must retain patient and financial records and provide the Department access to those records for a minimum of six (6) years from the date of service. Upon the reassignment of a participant to another ~~provider~~ PCP, the provider must transfer (if a request is made) a copy of the patient's medical record to the new ~~provider~~ PCP. Provider must also disclose information required by Subsection 205.01 of these rules, when applicable. (~~3-30-07~~)(4-1-07)T

f. Termination or Amendment of Provider Agreements. The Department may terminate a provider's agreement as provided in Subsection 205.03 of these rules. An agreement may be amended for the same reasons. (3-30-07)

565. HEALTHY CONNECTIONS - PROVIDER REIMBURSEMENT.

Providers will be paid a case management fee for primary care case management services in an amount determined by the Department. The fee will be based on the number of participants enrolled under the provider on the first day of each month. For providers reimbursed based on costs, such as Federally Qualified Health Centers and Rural Health Clinics, the case management fee is considered one hundred percent (100%) of the reasonable costs of an ambulatory service. (3-30-07)

01. Case Management Fee. Reimbursement is as follows: (4-1-07)T

a. PCPs will be paid a case management fee for primary care case management services. (4-1-07)T

b. PCPs enrolled in the chronic disease management pay-for-performance program will be paid an enhanced case management fee. (4-1-07)T

c. The amount of the fees is determined by the Department and specified in the provider agreement. (4-1-07)T

d. The amount of the fee is fixed and the same for all participating PCPs. (4-1-07)T

02. Primary Care Case Management. Reimbursement is based on the number of participants enrolled under the provider on the first day of each month multiplied by the amount of the case management fee. (4-1-07)T

03. Chronic Disease Management. Reimbursement is based on: (4-1-07)T

a. The number of participants who have a targeted chronic disease multiplied by the amount of the enhanced case management fee for patient identification; and (4-1-07)T

b. The number of instances that the PCP achieved Department specified best practices protocol for the disease being managed multiplied by the amount of the enhanced case management fee for reported quality indicators. (4-1-07)T

566. HEALTHY CONNECTIONS - QUALITY ASSURANCE.

The Department will establish performance measurements to evaluate the effectiveness of Chronic Disease Management. The performance measurements will be reviewed at least annually and adjusted as necessary to provide quality assurance. (4-1-07)T

567. -- 569. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0706

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), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code and Title XIX and Title XXI of the Social Security Act, as amended, and the companion federal regulations.

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

Tuesday, October 16, 2007 6:00 p.m. DHW - Region I Office 1120 Ironwood Drive, Suite 102 Coeur d'Alene, ID	Wednesday, October 17, 2007 6:00 p.m. DHW - Region IV Office 1720 Westgate Drive Suite D, Room 119, Boise, ID	Tuesday, October 23, 2007 6:00 p.m. DHW - Human Development Ctr 421 Memorial Drive Pocatello, ID
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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

The Idaho Occupational Therapy Association and the Idaho Speech and Hearing Association reported to the Department that in some areas of the state, occupational therapy and speech-language pathology services are in short supply, resulting in long waiting lists for Medicaid participants. This situation is due, in part, to the fact that occupational therapists and speech-language pathologists cannot bill Medicaid directly for their services. This has resulted in a shortage of providers, especially in rural areas, as some professionals move to other states that allow them to set up their own businesses and bill those Medicaid programs directly. Currently, the waiting time for children to obtain needed speech and occupational therapy ranges from two weeks to nine months across the state.

These rule changes are being proposed to improve access to therapy services for Medicaid participants while setting reasonable limits on these services.

These rule changes:

1. Allow occupational therapists and speech-language pathologists to become Medicaid providers and bill Medicaid directly resulting in improved participant access to these services;
2. Allow Home Health Agencies to bill for speech-language pathology services provided to participants in their homes; and
3. Limit a participant's occupational therapy to 25 visits and speech-language pathology services to 40 visits per calendar year without prior authorization. More visits can be prior authorized when medically necessary.

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.

This rule change requires updates to Medicaid's automated billing system estimated to cost \$125,000. However, no net increase in trustee and benefit costs are anticipated as a result of this rule change.

No new services will be implemented with this rule change. Rather, a new provider type will be allowed to bill

for therapy services. The improved access to therapy services that may result from this change may increase utilization of these services. However, the proposed rule change also sets new limits on the amount of therapy services that can be provided without prior authorization. It is anticipated that the increased access to therapy services in conjunction with limitations on therapy visits as a result of the prior authorization review will off-set each other.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted in the development of these rule changes. The groups involved in the negotiated rulemaking were: Idaho Occupational Therapy Association, Idaho Speech and Hearing Association, and the Idaho Physical Therapy Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Siroky at (208) 364-1897.

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 24, 2007.

DATED this 23rd day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0706

012. DEFINITIONS -- P THROUGH Z.

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

- 01. Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-30-07)
- 02. Patient.** The person undergoing treatment or receiving services from a provider. (3-30-07)
- 03. Physician.** A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a State or United States territory. (3-30-07)
- 04. Physician Assistant (PA).** A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-30-07)
- 05. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-30-07)
- 06. Private Rate.** Rate most frequently charged to private patients for a service or item. (3-30-07)
- 07. PRM.** Provider Reimbursement Manual. (3-30-07)

- 08. Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-30-07)
- 09. Prosthetic Device.** Replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts profession within the scope of his practice as defined by state law to: (3-30-07)
- a.** Artificially replace a missing portion of the body; or (3-30-07)
 - b.** Prevent or correct physical deformities or malfunctions; or (3-30-07)
 - c.** Support a weak or deformed portion of the body. (3-30-07)
 - d.** Computerized communication devices are not included in this definition of a prosthetic device. (3-30-07)
- 10. Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and who has entered into a written provider agreement with the Department in accordance with Section 205 of these rules. (3-30-07)
- 11. Provider Agreement.** A written agreement between the provider and the Department, entered into in accordance with Section 205 of these rules. (3-30-07)
- 12. Provider Reimbursement Manual (PRM).** A federal publication that specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, that are incorporated by reference in Section 004 of these rules. (3-30-07)
- 13. Prudent Layperson.** A person who possesses an average knowledge of health and medicine. (3-30-07)
- 14. Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-30-07)
- 15. Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. (3-30-07)
- 16. Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)
- 17. Quality Improvement Organization (QIO).** An organization that performs utilization and quality control review of health care furnished to Medicare and Medicaid participants. A QIO is formerly known as a Peer Review Organization (PRO). (3-30-07)
- 18. Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes the services, facilities, or supplies for the provider. (3-30-07)
- 19. R.N.** Registered Nurse, which in the State of Idaho is known as a Licensed Professional Nurse. (3-30-07)
- 20. Rural Health Clinic (RHC).** An outpatient entity that meets the requirements of 42 USC Section 1395x(aa)(2). It is primarily engaged in furnishing physicians and other medical and health services in rural,

federally-defined, medically underserved areas, or designated health professional shortage areas. (3-30-07)

21. Rural Hospital-Based Nursing Facilities. Hospital-based nursing facilities not located within a metropolitan statistical area (MSA) as defined by the United States Bureau of Census. (3-30-07)

22. Social Security Act. 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons who meet certain criteria. (3-30-07)

~~**23. Speech/Language Pathology and Audiology Services.** Diagnostic, screening, preventative, or corrective services provided by a licensed speech pathologist or audiologist, unless exempted from licensure under Title 54, Chapter 29, Idaho Code, for which a patient is referred by a physician or other practitioner of the healing arts within the scope of his or her practice under state law. Speech, hearing and language services do not include equipment needed by the patient such as communication devices or environmental controls. (3-30-07)~~

243. State Plan. The contract between the state and federal government under 42 USC Section 1396a(a). (3-30-07)

254. Supervision. Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-30-07)

265. Title XVIII. Title XVIII of the Social Security Act, known as Medicare, for aged, blind, and disabled individuals administered by the federal government. (3-30-07)

276. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)

287. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-30-07)

298. Third Party. Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a medical assistance participant. (3-30-07)

~~**3029. Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits described in this chapter of rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (3-30-07)

01. Hospital Services. The range of hospital services covered is described in Sections 400 through 447 of these rules. (3-30-07)

a. Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)

b. Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)

c. Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)

d. Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)

- e. Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)
- 02. Ambulatory Surgical Centers.** Ambulatory Surgical Center services are described in Sections 450 through 456 of these rules. (3-30-07)
- 03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 516 of these rules. (3-30-07)
 - a. Physician services are described in Sections 500 through 506. (3-30-07)
 - b. Abortion procedures are described in Sections 510 through 516. (3-30-07)
- 04. Other Practitioner Services.** Other practitioner services are described in Sections 520 through 556 of these rules. (3-30-07)
 - a. Midlevel practitioner services are described in Sections 520 through 526. (3-30-07)
 - b. Chiropractic services are described in Sections 530 through 536. (3-30-07)
 - c. Podiatrist services are described in Sections 540 through 546. (3-30-07)
 - d. Optometrist services are described in Sections 550 through 556. (3-30-07)
- 05. Primary Care Case Management.** Primary Care Case Management services are described in Sections 560 through 566 of these rules. (3-30-07)
- 06. Prevention Services.** The range of prevention services covered is described in Sections 570 through 646 of these rules. (3-30-07)
 - a. Health Risk Assessment services are described in Sections 570 through 576. (3-30-07)
 - b. Child wellness services are described in Sections 580 through 586. (3-30-07)
 - c. Adult physical services are described in Sections 590 through 596. (3-30-07)
 - d. Screening mammography services are described in Sections 600 through 606. (3-30-07)
 - e. Diagnostic Screening Clinic services are described in Sections 610 through 616. (3-30-07)
 - f. Personal Health Account services are described in Sections 620 through 626. (3-30-07)
 - g. Nutritional services are described in Sections 630 through 636. (3-30-07)
 - h. Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 656 of these rules. (3-30-07)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 666 of these rules. (3-30-07)
- 09. Family Planning.** Family planning services are described in Sections 680 through 686 of these rules. (3-30-07)
- 10. Mental Health Services.** The range of covered Mental Health services are described in Sections 700 through 716 of these rules. (3-30-07)

- a. Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-30-07)
- b. Mental Health Clinic services are described in Sections 707 through 718. (3-30-07)
11. **Home Health Services.** Home health services are described in Sections 720 through 726 of these rules. (3-30-07)
12. ~~Therapies~~ **Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 736 of these rules. ~~Speech and Occupational Therapy services are referred to in Section 738 of these rules.~~ (3-30-07)()
13. ~~Speech Language and Hearing~~ **Audiology Services.** Audiology services are described in Sections 740 through 746 of these rules. (3-30-07)()
14. **Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 776 of these rules. (3-30-07)
- a. Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
- b. Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)
- c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)
15. **Vision Services.** Vision services are described in Sections 780 through 786 of these rules. (3-30-07)
16. **Dental Services.** The range of covered dental and denturist services is described in Sections 800 through 806 of these rules. (3-30-07)
17. **Essential Providers.** The range of covered essential services is described in Sections 820 through 856 of these rules. (3-30-07)
- a. Rural health clinic services are described in Sections 820 through 826. (3-30-07)
- b. Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
- c. Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
- d. School-Based services are described in Sections 850 through 856. (3-30-07)
18. **Transportation.** The range of covered transportation services is described in Sections 860 through 876 of these rules. (3-30-07)
- a. Emergency transportation services are described in Sections 860 through 866. (3-30-07)
- b. Non-emergency transportation services are described in Sections 870 through 876. (3-30-07)
19. **EPSDT Services.** EPSDT services are described in Sections 880 through 886 of these rules. (3-30-07)
20. **Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 896 of these rules. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

720. HOME HEALTH SERVICES - DEFINITIONS.

Home health services encompass services ordered by the participant's attending physician as a part of a plan of care, that include nursing services, home health aide, physical therapy, ~~and~~ occupational therapy, and speech-language pathology services. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

SUB AREA L: ~~THERAPIES~~ THERAPY SERVICES
(Sections 730 through 739)

730. ~~PHYSICAL~~ THERAPY SERVICES - DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: ()

01. Duplicate Services. Services are considered duplicate: ()

a. When participants receive any combination of physical therapy, occupational therapy, or speech-language pathology services with treatments, evaluations, treatment plans, or goals that are not separate and unique to each service provided; or ()

b. When more than one (1) type of therapy is provided at the same time. ()

02. Maintenance Program. A maintenance program consists of any combination of drills, techniques, exercises, treatments, or activities that preserve the participant's present level of functioning and prevent regression of that function. A maintenance program begins when: ()

a. The therapeutic goals of a treatment plan have been achieved and no further functional progress is expected to occur: ()

b. The client or his caregivers, or both, have been taught and can carry out the therapy procedures; or ()

c. The skills of a therapist are no longer required. ()

03. Occupational Therapy Services. Therapy services that: ()

a. Are provided within the scope of practice of licensed occupational therapists: ()

b. Are necessary for the evaluation and treatment of impairments, functional disabilities, or changes in physical function and health status; and ()

c. Improve the individual's ability to perform those tasks required for independent functioning. ()

04. Physical Therapy Services. Therapy services that: ()

a. Are provided within the scope of practice of licensed physical therapists: ()

b. Are necessary for the evaluation and treatment of physical impairment or injury by the use of therapeutic exercise and the application of modalities that are intended to restore optimal function or normal development; and ()

c. Focus on the rehabilitation and prevention of neuromuscular, musculoskeletal, integumentary, and cardiopulmonary disabilities. ()

05. Speech-Language Pathology Services. Therapy services that are: ()

a. Provided within the scope of practice of licensed speech-language pathologists; and ()

b. Necessary for the evaluation and treatment of speech and language disorders which result in communication disabilities; or ()

c. Necessary for the evaluation and treatment of swallowing disorders (dysphagia), regardless of the presence of a communication disability. ()

06. Supervision. ()

a. Direct supervision requires that the therapist be physically present and available to render direction in person and on the premises where the therapy is being provided. ()

b. General supervision requires direct, on-premises contact between the therapist, the therapy assistant, and the participant at least every five (5) visits or once every week if seen on a daily basis. Between direct contacts, the therapist is required to maintain indirect, off-premises contact with the therapy assistant. These indirect, off-premises contacts may be by telephone, written reports, or group conferences. ()

07. Therapeutic Procedures. Therapeutic procedures are the application of clinical skills, services, or both, that attempt to improve function. ()

08. Therapist. An individual licensed by the appropriate Idaho state licensing board as an occupational therapist, physical therapist, or speech-language pathologist. ()

09. Therapy Assistant. An individual licensed by the appropriate therapy licensure board to assist in the practice of occupational or physical therapy under the supervision of the appropriate licensed therapist. The therapy assistant is not recognized as an independent Medicaid provider. ()

10. Therapy Services. Occupational therapy, physical therapy, and speech-language pathology services are all considered to be therapy services. These services are ordered by the participant's attending physician, nurse practitioner, or physician assistant as part of a plan of care. ()

~~**011. Treatment Modalities.** *Modalities are* A treatment modality is any physical agent applied to produce therapeutic changes to biological tissue, including the application of thermal, acoustic, light, mechanical or electrical energy. (3-30-07)()~~

~~**02. Therapeutic Procedures.** *Therapeutic procedures are the application of clinical skills, services, or both that attempt to improve function.* (3-30-07)~~

731. (RESERVED) THERAPY SERVICES - PARTICIPANT ELIGIBILITY.

To be eligible for therapy services, a participant must be eligible for Medicaid benefits and must have: ()

01. Physician Order. A physician order for therapy services; ()

02. Referral. A referral from their Healthy Connections Primary Care Provider when applicable; ()

03. A Therapy Evaluation Showing Need. A therapy evaluation of the participant showing a need for therapy due to a functional limitation, a loss or delay of skill, or both; and ()

04. A Therapy Evaluation Establishing Participant Benefit. A therapy evaluation establishing that the participant will benefit and demonstrate progress as a result of the therapy services. ()

732. ~~PHYSICAL~~ THERAPY SERVICES - COVERAGE AND LIMITATIONS.

Therapy services are covered under these rules when provided by the following providers: outpatient hospitals, outpatient rehabilitation facilities, comprehensive outpatient rehabilitative facilities, nursing facilities, developmental disability agencies, school-based services, independent practitioners, and home health agencies. ()

01. Service Description: Occupational Therapy and Physical Therapy. *The following modalities, therapeutic procedures, tests, and measurements as described in the Physical Medicine and Rehabilitation Subsection and the Neurology and Neuromuscular Procedures Subsection of the Physician's Current Procedural Terminology (CPT Manual) are covered with the following limitations:* (3-30-07)()

a. *CPT procedure code range 97032 through 97036 require direct, one to one, patient contact by the therapist. CPT procedure code range 97010 through 97028 may be performed under the supervision of the physical therapist. Any modality which is not contained in these procedure code ranges must be billed using CPT code 97039 for an unlisted modality, and requires authorization by the Department prior to payment. In this case, physician and therapist information documenting the medical necessity of the modality requested for payment must be provided in writing to the Department. Any evaluation or re-evaluation may only be performed by the therapist. Any changes in the participant's condition not consistent with planned progress or treatment goals necessitate a documented re-evaluation by the therapist before further treatment is carried out.* (3-30-07)()

b. *All therapeutic procedures Any CPT procedure code that falls under the heading of either, "Active Wound Care Management," or "Tests and Measurements," requires the therapist to have direct, one-to-one, patient contact. CPT procedure code range 97110 through 97602, but excluding CPT procedure code 97124, massage, and 97545 and 97546, work hardening and conditioning, are eligible for Medicaid payment. Any procedure not described by these procedure codes must be billed using CPT procedure code 97139 as an unlisted procedure, and requires authorization by the Department prior to payment. In this case, physician and therapist documentation of the medical necessity of the therapeutic procedure must be provided in writing to the Department.* (3-30-07)()

c. *The provision of tests or measurements as described by CPT procedure codes 97750 through 97755 may be reimbursed. The physical therapist may be reimbursed for the technical component of muscle testing, joint range of motion, electromyography, or nerve velocity determinations as described in the CPT procedure codes 95831 through 95904 Manual when ordered by a physician, nurse practitioner, or physician assistant.* (3-30-07)()

d. *The equipment used by the physical therapists to provide services is up to the discretion of the therapist and physician. All therapeutic equipment used by the therapist is included in the fee for service payment and no separate charge may be made to either the Medicaid program or participant. Any assessment provided under the heading "Orthotic Management and Prosthetic Management" must be completed by the therapist.* (3-30-07)()

e. *Any modality that is defined as "unlisted" in the CPT Manual requires prior authorization by the Department. In this case, the therapist and the physician, nurse practitioner, or physician assistant must provide information in writing to the Department that documents the medical necessity of the modality requested.* ()

f. *The services of therapy assistants used when providing covered therapy benefits are included as part of the covered service. These services are billed by the supervising therapist. Therapy assistants may not provide evaluation services, make clinical judgments or decisions, or take responsibility for the service. Therapy assistants act at the direction and under the supervision of the treating therapist and in accordance with state licensure rules.* ()

02. Service Limited Description: Speech-Language Pathology. *Each participant is limited to twenty-five (25) visits of outpatient physical therapy during any calendar year. The Department may authorize additional visits if such services are determined to be medically necessary. Visits to outpatient departments of hospitals and services provided by developmental disability agencies, or independent physical therapists providing physical therapy are included in the limit on the total outpatient physical therapy visits. Speech-language pathology services must be provided as defined in Section 730 of these rules. Services provided by speech-language pathology assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services.* (3-30-07)()

03. Non-Covered Services: Occupational Therapy, Physical Therapy, and Speech-Language

Pathology. ()

a. Continuing services for participants who do not exhibit the capability to achieve measurable improvement. ()

b. Services that address developmentally acceptable error patterns. ()

c. Services that do not require the skills of a therapist or therapy assistant. ()

d. Services provided by unlicensed aides or technicians, even if under the supervision of a therapist, except as provided under Section 854 of these rules. ()

e. Massage, work hardening, and conditioning. ()

f. Services that are not medically necessary, as defined in Section 011 of these rules. ()

g. Maintenance programs, as defined under Section 730 of these rules. ()

h. Duplicate services, as defined under Section 730 of these rules. ()

i. Group therapy in settings other than school-based services and developmental disability agencies. ()

04. Service Limitations. ()

a. Physical Therapy and Occupational Therapy. Each participant is limited to twenty-five (25) outpatient physical therapy visits and twenty-five (25) outpatient occupational therapy visits during any calendar year. The Department may prior authorize additional visits if additional physical therapy or occupational therapy services, or both, are determined to be medically necessary. ()

b. Speech-Language Pathology Services. Each participant is limited to forty (40) outpatient speech-language pathology visits during any calendar year. The Department may prior authorize additional visits if additional speech-language pathology services are determined to be medically necessary. ()

c. Exceptions to visit limitations. ()

i. Therapy provided by home health agencies is subject to the limitations on home health visits contained in Section 722 of these rules. ()

ii. Therapy provided through school-based services is not included in the visit limitations under Subsection 732.04 of this rule. ()

733. PHYSICAL THERAPY SERVICES - PROCEDURAL REQUIREMENTS.

The Department will pay for *physical* therapy services rendered by or under the supervision of a licensed *physical* therapist if such services are ordered by the attending physician, nurse practitioner, or physician assistant as part of a plan of care. (3-30-07)()

01. Physician Orders. ()

a. All *physical* therapy must be ordered by a physician, nurse practitioner, or physician assistant, and such orders must include at a minimum, the service to be provided, the frequency, and, where applicable, the duration of each therapeutic session. ()

b. In the event that services are required for extended periods, these services must be reordered as necessary, but at least every thirty (30) days for all participants ~~except those receiving home health agency services and participants with chronic conditions which require on-going physical therapy.~~ *Physical* with the following exceptions: ()

i. ~~Therapy~~ provided by home health agencies must be included in the home health plan of care and be reordered ~~not less often than~~ at least every sixty (60) days. ()

ii. Therapy for individuals with chronic medical conditions, as documented by physician, nurse practitioner, or physician assistant, must be reordered up to at least every six (6) months. Documentation including the physician orders, care plans, progress or other notes documenting each assessment, therapy session and testing or measurement results must be maintained in the files of the therapist. The absence of such documentation is cause for recoupment of Medicaid payment. (3-30-07)()

02. Level of Supervision. ()

a. General supervision of therapy assistants is required when therapy services are provided by outpatient hospitals, nursing facilities, home health agencies, outpatient rehabilitation facilities, comprehensive outpatient rehabilitation facilities, and providers of school-based services. ()

b. Direct supervision of therapy assistants is required when therapy services are provided by independent practitioners. ()

c. All therapy services provided in a developmental disabilities agency must be provided by the therapist in accordance with IDAPA 16.04.11, "Developmental Disabilities Agencies." ()

734. (~~RESERVED~~) THERAPY SERVICES - PROVIDER QUALIFICATIONS AND DUTIES.

The following providers are qualified to provide therapy services as Medicaid providers.

01. Occupational Therapist, Licensed. A person licensed by the State Board of Medicine to conduct occupational therapy assessment and therapy in accordance with the Occupational Therapy Practice Act, Title 54, Chapter 37, Idaho Code, and IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." ()

02. Physical Therapist, Licensed. A person licensed by the Physical Therapy Licensure Board to conduct physical therapy assessments and therapy in accordance with the Physical Therapy Practice Act, Title 54, Chapter 22, Idaho Code, and IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board." ()

03. Speech-Language Pathologist, Licensed. A person licensed by the Speech and Hearing Services Licensure Board to conduct speech-language assessments and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, and IDAPA 24.23.01, "Rules of the Speech and Hearing Services Licensure Board," who possesses a certificate of clinical competence in speech-language pathology from the American Speech, Language, and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. ()

735. PHYSICAL THERAPY SERVICES - PROVIDER REIMBURSEMENT.

01. Payment for ~~Physical~~ Therapy Services. The payment for ~~physical~~ therapy includes the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the participant for the use of such equipment. (3-30-07)()

02. Payment Procedures. Payment procedures are as follows: (3-30-07)

a. Physical therapy rendered by home health agencies must have, at least every sixty (60) days, physician recertification in writing that those services were medically necessary. The physician recertification must be on the copy of the physician's order and must be kept on file with the provider. Physical therapy provided by home health agencies will be paid at a rate per visit as described in Section 725 of these rules and subject to the home health visit limitations contained in Section 722 of these rules. Therapy provided by home health agencies will be paid at a per visit rate as described in Section 725 of these rules and in accordance with IDAPA 16.03.07, "Rules for Home Health Agencies." (3-30-07)()

b. ~~Physical~~ Therapists identified by Medicare as independent practitioners and enrolled as Medicaid providers will be ~~paid~~ reimbursed on a fee-for-service basis. The maximum fee paid will be based upon the Department's fee schedule, available from the Medicaid Central Office, see Section 005 of these rules. Only these practitioners can bill the Department directly for their services. A therapy assistant cannot bill Medicaid directly. (3-30-07)()

c. ~~Physical~~ Therapy rendered on-site to hospital inpatients or outpatients will be paid at a rate not to exceed the payment determined as reasonable cost using Title XVIII (Medicare) standards and principles. (3-30-07)()

d. Payment for ~~physical~~ therapy services rendered to participants in long-term care facilities or Developmental Disabilities Agencies is included in the facility or agency reimbursement as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)()

e. Payment for therapy services rendered to participants in school-based services is described in Section 855 of these rules. ()

736. THERAPY SERVICES - QUALITY ASSURANCE ACTIVITIES.

01. Unreimbursable Services and Penalties. Therapy services that are not medically necessary or that are not specifically covered by these rules are not reimbursable, and if paid are subject to recoupment and penalties under IDAPA 16.05.07, "The Investigation and Enforcement of Fraud, Abuse, and Misconduct." ()

02. Therapist Conditions and Requirements. The therapist is required to formulate all therapy interventions in accordance with the applicable licensure rules in IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," or IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," or IDAPA 24.23.01, "Rules of the Speech and Hearing Services Licensure Board," as well as the applicable association's professional Code of Ethics and Standards supporting best practice. ()

03. Documentation. ()

a. The provider must maintain financial and other records in sufficient detail to allow the Department to audit them as described in Section 305 of these rules. ()

b. The following documentation must be maintained in the files of the provider: ()

i. Physician, nurse practitioner, or physician assistant orders for therapy services; ()

ii. Therapy plans of care; and ()

iii. Progress or other notes documenting each assessment, each therapy session, and results of tests and measurements related to therapy services. ()

c. The provider must grant the Department immediate access to all information required to review compliance with these rules, as required in Section 330 of these rules. The absence of such documentation is cause for recoupment of Medicaid payment. ()

~~736. -- 737. (RESERVED).~~

738. SPEECH AND OCCUPATIONAL THERAPY SERVICES:

~~Speech Therapy services are covered under these rules when provided by outpatient hospitals and school-based services providers. Occupational Therapy services are covered under these rules when provided by outpatient hospitals, home health agencies, and school-based services providers.~~ (3-30-07)

~~737. -- 739. (RESERVED).~~

SUB AREA M: ~~SPEECH LANGUAGE AND HEARING~~ AUDIOLOGY SERVICES
(Sections 740 through 749)

740. ~~(RESERVED)~~ AUDIOLOGY SERVICES.

Audiology services are diagnostic, screening, preventive, or corrective services provided by an audiologist. These services must be provided in accordance with Title 54, Chapter 29, Idaho Code, and require the order of a physician, nurse practitioner, or physician assistant. Audiology services do not include equipment needed by the patient such as communication devices or environmental controls. ()

(BREAK IN CONTINUITY OF SECTIONS)

752. DURABLE MEDICAL EQUIPMENT AND SUPPLIES - COVERAGE AND LIMITATIONS.

The Department will purchase or rent, when medically necessary, reasonable, and cost effective, durable medical equipment (DME) and medical supplies for participants residing in community settings including those provided by qualified home health providers under home health agency plans of care that meet the requirements found in Sections 720 through 724 of these rules. (3-30-07)

01. Medical Necessity Criteria. Department standards for medical necessity are those national standards set by Centers for Medicare and Medicaid Services (CMS) in the Medicare DME MAC Jurisdiction D Supplier Manual. Exceptions to Medicare coverage are contained in Section 752 of this chapter of rules. DME/medical supplies will be purchased or rented only if ordered in writing (signed and dated) by a physician as listed in the Medicare DME MAC Jurisdiction D Supplier Manual. Date of delivery is considered the date of service. The following information to support the medical necessity of the item(s) must be included in the physician's order and accompany all requests for prior authorization or be kept on file with the DME provider for items that do not require prior authorization: (3-30-07)

a. The participant's medical diagnosis including current information on the medical condition which requires the use of the supplies and/or medical equipment; and (3-30-07)

b. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; and (3-30-07)

c. For medical equipment, a full description of the equipment needed. All modifications or attachments to basic equipment must be supported; and (3-30-07)

d. For medical supplies, the type and quantity of supplies necessary must be identified; and (3-30-07)

e. Documentation of the participant's medical necessity for the item, that meets coverage criteria in the CMS/Medicare DME coverage manual. (3-30-07)

f. Additional information may be requested by the Department for specific equipment and/or supplies such as, but not limited to, wheelchairs, apnea monitors, oximeters, hospital beds or equipment for which CMS/Medicare has established no coverage criteria. (3-30-07)

g. Items for convenience, comfort or cosmetic reasons are not covered. (3-30-07)

02. Coverage Conditions - Equipment. Medical equipment is subject to coverage limitations in the CMS/Medicare DME coverage manual. Additional documentation requirements or coverage beyond those in the CMS/Medicare DME coverage manual include: (3-30-07)

a. Wheelchairs. The Department will provide the least costly wheelchair that is appropriate to meet the participant's medical needs. Wheelchair rental or purchase requires prior authorization by the Department.

(3-30-07)

i. In addition to the physician's information, each request for purchase of a wheelchair must be accompanied by a written evaluation by a physical therapist or an occupational therapist. The evaluation must include documentation of the appropriateness and cost effectiveness of the specific wheelchair and all modifications and/or attachments and its ability to meet the participant's long-term medical needs. For each request for a rental of a wheelchair, a physical therapist or an occupational therapist evaluation may be required on a case-by-case basis, to be determined by the Department; (3-30-07)

ii. Additional wheelchairs or seating systems may be considered within the five (5) year limitation with written documentation from the physician and a written evaluation from a physical therapist or an occupational therapist indicating the reason the current wheelchair no longer meets the participant's medical needs and cannot be modified to meet the participant's needs. All documentation required for a wheelchair or seating system purchase is required. (3-30-07)

b. Semi-electric hospital beds must be prior authorized by the Department and will be approved only when the physician documents that the participant meets the criteria set by the CMS/Medicare DME coverage manual and the participant lives in an independent living situation where there is no one available to provide assistance with a manual bed a major portion of the day. (3-30-07)

c. Communication devices will be considered for purchase by the Department under the following conditions. (3-30-07)

i. The need for the device must be based on a comprehensive history and physical. (3-30-07)

ii. The individual must lack the ability to communicate needs with the primary care physician or caregiver. (3-30-07)

iii. If the individual knows sign language or is capable of learning sign language a communication device would not be considered medically necessary. (3-30-07)

iv. The assessment and evaluation for the communication device must include comprehensive information as related to the individual's ability to communicate and review of the most cost effective devices to meet the individuals needs. Documentation must include: (3-30-07)

(1) Demographic and biographic summary; (3-30-07)

(2) Inventory of skills and sensory function; (3-30-07)

(3) Inventory of present and anticipated future communication needs; (3-30-07)

(4) Summary of device options; (3-30-07)

(5) Recommendation for device; and (3-30-07)

(6) Copy of individual treatment plan. (3-30-07)

v. Repairs to the device must be prior authorized and must not include modifications, technological improvements or upgrades. (3-30-07)

vi. Reimbursable supplies include rechargeable batteries, overlays, and symbols. (3-30-07)

vii. The use or provision of the system by any individual other than the participant for which the system was authorized is prohibited (3-30-07)

viii. Training and orientation in the use of the communication device may be billed as ~~speech therapy~~ speech-language pathology services by Medicaid-~~approved~~ providers ~~such as a Developmental Disability Agency, or~~

~~a Hospital that employs a speech therapist~~ of speech-language pathology services. ~~(3-30-07)~~()

- d. Maternity abdominal supports will be covered if the participant has: (3-30-07)
 - i. Vulvular varicosities; (3-30-07)
 - ii. Perineal edema; (3-30-07)
 - iii. Lymphedema; (3-30-07)
 - iv. External prolapse of the uterus or bladder; (3-30-07)
 - v. Hip separation; (3-30-07)
 - vi. Pubic symphysis separation; or (3-30-07)
 - vii. Severe abdominal or back strain. (3-30-07)
- e. Apnea monitors when there is one (1) or more documented apneic episodes in the last previous two (2) months. ~~(3-30-07)~~()

03. Medical Supply Program Requirements. The Department will purchase no more than a one (1) month supply of necessary medical supplies per calendar month for the treatment or amelioration of a medical condition identified by the attending physician. Limitations for supplies follow the CMS/Medicare DME coverage manual. Supplies in excess of those limitations must be prior authorized by the Department. (3-30-07)

- a. Each request for prior authorization must include all information required in Subsection 752.01 of this rule. (3-30-07)
- b. Supplies other than those listed below will require prior authorization: (3-30-07)
 - i. Catheter supplies including catheters, drainage tubes, collection bags, and other incidental supplies; (3-30-07)
 - ii. Cervical collars; (3-30-07)
 - iii. Colostomy and/or urostomy supplies; (3-30-07)
 - iv. Cotton tip applicators; (3-30-07)
 - v. Disposable supplies necessary to operate Department-approved medical equipment such as suction catheters, syringes, saline solution, etc.; (3-30-07)
 - vi. Dressings and bandages to treat wounds, burns, or provide support to a body part; (3-30-07)
 - vii. Fluids for irrigation; (3-30-07)
 - viii. Incontinence supplies (See Subsection 752.04.b. of this rule for limitations); (3-30-07)
 - ix. Injectable supplies including normal saline and Heparin but excluding all other prescription drug items; (3-30-07)
 - x. Blood glucose or urine glucose checking/monitoring materials (tablets, tapes, strips, etc.), lancets; and (3-30-07)
 - xi. Therapeutic drug level home monitoring kits. (3-30-07)

xii. Oral, enteral, or parenteral nutritional products, see Subsection 752.04.a. of this rule additional documentation requirements. (3-30-07)

04. Coverage Conditions - Supplies. Medical supplies are covered when medical necessity criteria per the CMS/Medicare DME coverage manual or the following medical supply items are subject to the following limitations and additional documentation requirements: (3-30-07)

a. Nutritional products. Nutritional products will be purchased for participants who meet the CMS/Medicare DME coverage manual criteria, when the supplement is given by tube feeding or orally to meet caloric needs of the participant who cannot maintain growth, weight, and strength commensurate with his general condition from traditional foods alone. (3-30-07)

i. A nutritional plan must be developed and be on file with the provider and must include appropriate nutritional history, the participant's current height, weight, age and medical diagnosis. For participants under the age of twenty-one (21), a growth chart including weight/height percentile must be included; (3-30-07)

ii. The plan must include goals for either weight maintenance and/or weight gain and must outline steps to be taken to decrease the participant's dependence on continuing use of nutritional supplements; (3-30-07)

iii. Documentation of evaluation and updating of the nutritional plan and assessment by a physician as needed but at least annually. (3-30-07)

b. Incontinent supplies. Incontinent supplies are covered for persons over four (4) years of age only and do not require prior authorization unless the participant needs supplies in excess of the following limitations: (3-30-07)

i. Diapers are restricted in number to two hundred forty (240) per month. If the physician documents that additional diapers are medically necessary, the Department may authorize additional amounts on an individual basis. (3-30-07)

ii. Disposable underpads are restricted to one hundred fifty (150) per month. (3-30-07)

iii. Pullups, for participants between the ages of four (4) and twenty-one (21), are only allowed when the participant is participating in a formal toilet training program written by an Occupational Therapist, Qualified Mental Retardation Professional (QMRP), or Developmental Specialist. Documentation for toilet training program must be updated on a yearly basis. ~~(3-30-07)~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0704

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), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code and Title XIX and Title XXI of the Social Security Act, as amended, and the companion federal regulations.

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

Tuesday, October 16, 2007 6:00 p.m. DHW - Region I Office 1120 Ironwood Drive, Suite 102 Coeur d'Alene, ID	Wednesday, October 17, 2007 6:00 p.m. DHW - Region IV Office 1720 Westgate Drive Suite D, Room 119, Boise, ID	Tuesday, October 23, 2007 6:00 p.m. DHW - Human Development Ctr. 421 Memorial Drive Pocatello, ID
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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 rulemaking aligns the content in this chapter related to speech-language pathology services and occupational therapy services with the changes being proposed concurrently under Docket No. 16-0309-0706.

These rule changes:

1. Delete the limit of 250 speech therapy sessions per calendar year and add a citation to new text proposed for IDAPA 16.03.09 that establishes a new limit of 40 sessions per calendar year;
2. Add a citation to new text proposed for IDAPA 16.03.09 that establishes a new limit of 25 sessions per calendar year for occupational therapy sessions; and
3. Make consistent the language used to refer to physical therapy, occupational therapy, and speech-language pathology services.

NOTE: For both of these therapy services, under new language being proposed concurrently in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," additional sessions may be prior authorized if they are determined to be medically necessary.

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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted in the development of these rule changes. The groups involved in the informal negotiated rulemaking were: Idaho Occupational Therapy Association, Idaho Speech and Hearing Association, and the Idaho Physical Therapy Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Siroky at (208) 364-1897.

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 24, 2007.

DATED this 23rd day of August, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0704

036. GENERAL REIMBURSEMENT.

01. Long-Term Care Facility Payment. Long-term care facilities will be reimbursed the lower of their customary charges, their actual reasonable costs, or the standard costs for their class as set forth in the Provider Reimbursement Manual, but the upper limits for payment must not exceed the payment which would be determined as reasonable costs using the Title XVIII Medicare standards and principles. (3-19-07)

02. Individual Provider Payment. The Department will not pay the individual provider more than the lowest of: (3-19-07)

a. The provider's actual charge for service; or (3-19-07)

b. The maximum allowable charge for the service as established by the Department on its pricing file, if the service or item does not have a specific price on file, the provider must submit documentation to the Department and reimbursement will be based on the documentation; or (3-19-07)

c. The Medicaid upper limitation of payment on those services, minus the Medicare payment, where a participant is eligible for both Medicare and Medicaid. The Department will not reimburse providers an amount in excess of the amount allowed by Medicaid, minus the Medicare payment. (3-19-07)

03. Payment for ~~Speech, Occupational and Physical~~ Therapy Services. The fees for physical ~~therapy~~, occupational ~~therapy~~, and speech-~~therapy~~-~~language~~ pathology services include the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the client for the use of such equipment. (~~3-19-07~~)()

(BREAK IN CONTINUITY OF SECTIONS)

075. ENHANCED PLAN BENEFITS - COVERED SERVICES.

Individuals who are eligible for the Medicaid Enhanced Plan Benefits are eligible for all benefits covered under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." In addition to those benefits, individuals in the enhanced plan are eligible for the following enhanced benefits as provided for in this chapter of rules. (3-19-07)

01. Enhanced Hospital Benefits. Organ transplants are provided under the Enhanced Hospital

services as described in Sections 090 through 099 of these rules. (3-19-07)

02. Enhanced Mental Health Benefits. Enhanced Mental Health services are provided under Sections 100 through 147 of these rules. (3-19-07)

03. Enhanced Home Health Benefits. Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)

04. ~~Therapies~~ Therapy Services. Physical therapy, ~~Speech, and Occupational Therapy, and speech-language pathology services are~~ Providers provided as described in Section 215 of these rules. ~~(3-19-07)()~~

05. Long Term Care Services. The following services are provided under the Long Term Care Services. (3-30-07)

a. Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)

b. Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)

c. A & D Waiver Services as described in Sections 320 through 330 of these rules. (3-30-07)

06. Hospice. Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)

07. Developmental Disabilities Services. (3-19-07)

a. Developmental Disability Standards as described in Sections 500 through 506 of these rules. (3-19-07)

b. Behavioral Health Prior Authorization as described in Sections 507 through 520 of these rules. (3-19-07)

c. ICF/MR as described in Sections 580 through 649 of these rules. (3-19-07)

d. Developmental Disabilities Agencies as described in Sections 700 through 719 of these rules. (3-19-07)

08. Service Coordination Services. Service coordination as described in 720 through 779 of these rules. (3-19-07)

09. Breast and Cervical Cancer Program. Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

215. PHYSICAL THERAPY, ~~SPEECH, AND~~ OCCUPATIONAL THERAPY AND ~~SPEECH-LANGUAGE PATHOLOGY SERVICES.~~

In addition to the providers listed at IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 730 through 738~~9~~, physical therapy, ~~speech, and~~ occupational therapy, and ~~speech-language pathology~~ services are covered under these rules when provided by a Developmental Disabilities Agencies. ~~(3-19-07)()~~

(BREAK IN CONTINUITY OF SECTIONS)

326. AGED OR DISABLED WAIVER SERVICES - COVERAGE AND LIMITATIONS.

01. Adult Day Care. Adult day care is a supervised, structured day program, outside the home of the participant, that may offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. (3-19-07)

02. Adult Residential Care Services. Services are those that consist of a range of services provided in a congregate setting licensed in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that includes: (3-19-07)

- a.** Medication management; (3-19-07)
- b.** Assistance with activities of daily living; (3-19-07)
- c.** Meals, including special diets; (3-19-07)
- d.** Housekeeping; (3-19-07)
- e.** Laundry; (3-19-07)
- f.** Transportation; (3-19-07)
- g.** Opportunities for socialization; (3-19-07)
- h.** Recreation; and (3-19-07)
- i.** Assistance with personal finances. (3-19-07)
- j.** Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)
- k.** A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

03. Assistive Technology. Assistive technology is any item, piece of equipment, or product system beyond the scope of the Medicaid State Plan, whether acquired off the shelf or customized, that is used to increase, maintain, or improve the functional capability of the participant. Assistive technology also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment. (3-19-07)

04. Assisted Transportation. Individual assistance with non-medical transportation services, including escort to a person who has difficulties (physical or cognitive) using regular vehicular transportation. Such services are specified in the plan for services in order to enable waiver participants to gain access to waiver and other community services and resources. (3-19-07)

a. Assisted transportation service is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 860 through 876, and will not replace it. (3-19-07)

b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (3-19-07)

05. Attendant Care. Attendant care services are those services that involve personal and medically oriented tasks dealing with the functional needs of the participant. These services may include personal care and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional. Services may occur in the participant's home, community, work, school or recreational settings. (3-30-07)

- a.** To utilize the services of a Personal Assistance Agency acting as a fiscal intermediary, the

participant family, or legal representative must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. If the participant, family, or legal representative is unable or unwilling to assume such responsibility, then an agency employee must be utilized. (3-19-07)

b. The Department may require supervision by a health care professional if the required care is so complex that such supervision is necessary for health and safety. (3-19-07)

06. Chore Services. Chore services include the services provided in Subsection 326.06.a. and 326.06.b. of this rule: (3-19-07)

a. Intermittent Assistance may include the following. (3-19-07)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in their home. (3-19-07)

b. Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

c. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer, agency, or third party payer is willing to or is responsible for their provision. (3-19-07)

d. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

07. Adult Companion. In-home services to insure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. However, the major responsibility is to provide companionship and be there in case they are needed. (3-19-07)

08. Consultation. Consultation services are services to a participant or family member. Services provided by a PAA to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self reliance possible for the participant/family. Services to the provider are for the purpose of understanding the special needs of the participant and the role of the care giver. (3-19-07)

09. Home Delivered Meals. Meals which are designed to promote adequate participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to

participants who: (3-19-07)

- a. Rent or own their own home; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no regular caretaker for extended periods of time; and (3-19-07)
- d. Are unable to prepare a balanced meal. (3-19-07)

10. Homemaker Services. Assistance to the participant with light housekeeping, laundry, assistance with essential errands, meal preparation, and other light housekeeping duties if there is no one else in the household capable of performing these tasks. (3-19-07)

11. Home Modifications. Minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization. Such adaptations may include: (3-19-07)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but will exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-19-07)

b. Permanent environmental modifications are limited to modifications to a home owned by the participant or the participant's family and the home is the participant's principal residence. (3-19-07)

c. Portable or Non-Stationary Modifications. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

12. Personal Emergency Response System. A system which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical, or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who: (3-19-07)

- a. Rent or own their home, or live with unpaid relatives; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no caretaker for extended periods of time; and (3-19-07)
- d. Would otherwise require extensive routine supervision. (3-19-07)

13. Psychiatric Consultation. Psychiatric Consultation is direct consultation and clinical evaluation of participants, who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. This service may provide training to the direct service provider or participant's family related to the needs of a participant. These services also provide emergency intervention involving the direct support of the participant in crisis. (3-19-07)

14. Respite Care. Occasional breaks from care giving responsibilities to non-paid care givers. The care giver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. (3-19-07)

15. Service Coordination. Service coordination includes all of the activities contained in Section 727 of these rules. Such services are designed to foster independence of the participant, and will be time limited.

(3-19-07)

a. All services will be provided in accordance with an individual service plan. All services will be incorporated into the Individual Service plan and authorized by the RMS. (3-19-07)

b. The service coordinator must notify the RMS, the Personal Assistance Agency, as well as the medical professionals involved with the participant of any significant change in the participant's situation or condition. (3-19-07)

16. Skilled Nursing Services. Intermittent or continuous oversight, training, or skilled care which is within the scope of the Nurse Practice Act and as such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. Nursing services may include but are not limited to: (3-19-07)

a. The insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material; (3-19-07)

b. The maintenance of volume ventilators including associated tracheotomy care, tracheotomy, and oral pharyngeal suctioning. (3-19-07)

c. Maintenance and monitoring of IV fluids or nutritional supplements which are to be administered on a continuous or daily basis; (3-19-07)

d. Injections; (3-19-07)

e. Blood glucose monitoring; and (3-19-07)

f. Blood pressure monitoring. (3-19-07)

17. Habilitation. Habilitation services consist of an integrated array of individually-tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in alternate family homes. (3-30-07)

a. Residential habilitation services assist the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-30-07)

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

b. Day rehabilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day rehabilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech ~~therapies~~ language pathology services listed in the plan of care. In addition, day rehabilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (~~3-30-07~~)(____)

18. Supported Employment. Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained by RMS in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (3-30-07)

b. Federal Financial Participation (FFP) can not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of supported employment programs, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-30-07)

19. Behavior Consultation or Crisis Management. Behavior consultation or crisis management consists of services that provide direct consultation and clinical evaluation of participants who are currently experiencing, or are expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also include emergency back-up that provides direct support and services to a participant in crisis. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

513. BEHAVIOR HEALTH PRIOR AUTHORIZATION - PLAN OF SERVICE.

In collaboration with the participant, the Department must assure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (3-19-07)

01. Qualifications of a Paid Plan Developer. Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan

development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-19-07)

02. Plan Development. The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (3-19-07)

03. Prior Authorization Outside of These Rules. The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-19-07)

- a. Durable Medical Equipment (DME); (3-19-07)
- b. Transportation; and (3-19-07)
- c. Physical therapy, ~~speech and~~ occupational therapy, and ~~speech-language pathology services~~ provided outside of a Development Disabilities Agency (DDA). (~~3-19-07~~)()

04. No Duplication of Services. The plan developer will ensure that there is no duplication of services if there are multiple plans of service. Duplicate services will not be authorized. (3-19-07)

05. Plan Monitoring. The participant, service coordinator or plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-19-07)

- a. Review of the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (3-19-07)
- b. Contact with service providers to identify barriers to service provision; (3-19-07)
- c. Discuss with participant satisfaction regarding quality and quantity of services; and (3-19-07)
- d. Review of provider status reviews and complete a plan monitor summary after the six (6) month review and for annual plan development. (3-19-07)
- e. Immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Regional Medicaid Services (RMS), the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (3-19-07)

06. Provider Status Reviews. Service providers, with exceptions identified in Subsection 513.11 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (3-19-07)

- a. The status of supports and services to identify progress; (3-19-07)
- b. Maintenance; or (3-19-07)
- c. Delay or prevention of regression. (3-19-07)

07. Plan Monitor Summary. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on

the provider status review. (3-19-07)

08. Content of the Plan of Service. The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-19-07)

09. Negotiation for the Plan of Service. The plan of service must be individualized with the participant if the requested services fall outside the individualized budget or do not reflect the assessed needs. When the plan of service cannot be negotiated by the assessor, the plan developer, and the participant, it will be referred by the assessor to the Department's care manager for additional evaluation. Services will not be paid for unless they are authorized on the plan of service. (3-19-07)

10. Informed Consent. Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (3-19-07)

11. Provider Implementation Plan. Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (3-19-07)

a. Exceptions. An implementation plan is not required for waiver providers of: (3-19-07)

i. Specialized medical equipment; (3-19-07)

ii. Home delivered meals; (3-19-07)

iii. Environmental modifications; (3-19-07)

iv. Non-medical transportation; (3-19-07)

v. Personal emergency response systems (PERS); (3-19-07)

vi. Respite care; and (3-19-07)

vii. Chore services. (3-19-07)

b. Time for Completion. The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (3-19-07)

c. Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title. (3-19-07)

12. Addendum to the Plan of Service. A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. (3-19-07)

13. Community Crisis Supports. Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a

documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (3-19-07)

a. Emergency Room. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (3-19-07)

b. Before Plan Development. Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (3-19-07)

c. Crisis Resolution Plan. After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. (3-19-07)

14. Annual Reauthorization of Services. A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (3-19-07)

a. Plan Developer Responsibilities for Annual Reauthorization. A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (3-19-07)

i. Notify the providers who appear on the plan of service of the annual review date. (3-19-07)

ii. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.14.d of these rules. (3-19-07)

iii. Convene the person-centered planning team to develop a new plan of service. (3-19-07)

b. Evaluation and Prior Authorization of the Plan of Service. The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 507 and 513 of these rules. (3-19-07)

c. Adjustments to the Annual Budget and Services. The annual budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (3-19-07)

d. Annual Status Reviews Requirement. If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Subsection 513.12 of these rules. (3-19-07)

e. Reapplication After a Lapse in Service. For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (3-19-07)

f. Annual Assessment Results. An annual assessment must be completed in accordance with Section 512 of these rules. (3-19-07)

15. Reconsiderations, Complaints, and Administrative Appeals.

a. Reconsideration. Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a reconsideration within twenty-eight (28) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team as determined by the Department with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision

within fifteen (15) days of receipt of the request. (3-19-07)

b. Complaints. Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid, Bureau of Care Management. (3-19-07)

c. Administrative Appeals. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

653. DDA SERVICES - COVERAGE REQUIREMENTS AND LIMITATIONS.

01. Requirement for Plan of Service and Prior Authorization. (3-19-07)

a. All therapy services for children must be identified on the Individual Program Plan developed by the developmental disabilities agency (DDA) as described in IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

b. All therapy services for adults with developmental disabilities and ISSH waiver participants must be identified on the plan of service and prior authorized as described in Sections 507 through 520 of these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

02. Assessment and Diagnostic Services. Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies": (3-19-07)

a. Comprehensive Developmental Assessment; (3-19-07)

b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the twelve (12) hour limitation described in this subsection; (3-19-07)

c. Occupational Therapy Assessment (3-19-07)

d. Physical Therapy Assessment; (3-19-07)

e. Speech and Language Assessment; (3-19-07)

f. Medical/Social History; and (3-19-07)

g. Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. (3-19-07)

03. Therapy Services. Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in IDAPA 16.04.11, "Developmental Disabilities Agencies." The following therapy services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

a. Developmental Therapy. Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family

home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. (3-19-07)

b. Psychotherapy Services. Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, and include: (3-19-07)

i. Individual psychotherapy; (3-19-07)

ii. Group psychotherapy; and (3-19-07)

iii. Family-centered psychotherapy which must include the participant and one (1) other family member at any given time. (3-19-07)

c. Supportive Counseling. Supportive counseling must only be delivered on an individualized, one-to-one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty-five (45) hours in a calendar year. (3-19-07)

d. ~~Speech and Hearing Therapy Language Pathology~~ Speech and hearing therapy language pathology Services. ~~Speech and hearing therapy language pathology services are limited to two hundred fifty (250) treatment sessions per calendar year. Speech and hearing therapy~~ includes individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (3-19-07)()

e. Physical Therapy Services. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 7379. ~~Physical therapy includes individual or group therapy.~~ (3-19-07)()

f. Occupational Therapy Services. Occupational therapy services includes individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (3-19-07)()

g. Intensive Behavioral Intervention (IBI). IBI is limited to a lifetime limit of thirty six (36) months. (3-19-07)

i. The DDA must receive prior authorization from the Department prior to delivering IBI services. (3-19-07)

ii. IBI must only be delivered on an individualized, one-to-one basis. (3-19-07)

h. Intensive Behavioral Intervention (IBI) Consultation. IBI consultation is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. (3-19-07)

i. Collateral Contact. Collateral contact is consultation or treatment direction about the participant to a significant other in the participant's life and may be conducted face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent-teacher conferences, general parent education, or for treatment team meetings, even when the parent is present, is not reimbursable. (3-19-07)

j. Pharmacological Management. Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (3-19-07)

04. Excluded Services. The following services are excluded for Medicaid payments: (3-19-07)

a. Vocational services; (3-19-07)

- b.** Educational services; and (3-19-07)
- c.** Recreational services. (3-19-07)
- 05. Limitations on DDA Services.** Therapy services may not exceed the limitations as specified below. (3-19-07)

 - a.** The combination of therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules must not exceed thirty (30) hours per week. (3-19-07)
 - b.** Therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules provided in combination with Community Supported Employment services under Subsection 703.04 of these rules must not exceed forty (40) hours per week. (3-19-07)
 - c.** When a HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. (3-19-07)
 - d.** Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. (3-19-07)
 - e.** Prior to delivering any services in a school-based setting, the DDA must have a contract with the school or the Infant Toddler program. The DDA must not bill Medicaid or the Medicaid participant for these contracted services. Only the school district, charter school, or the Idaho Infant Toddler program may bill Medicaid for these contracted services when provided in accordance with IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 850 through 856. (3-19-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0701

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 17, 2007.

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, higher education stakeholders, advocacy group stakeholders, Health and Welfare Committees of the House and the Senate, and the Idaho Childcare Advisory Panel to:

1. Increase the current income limits to 135% of the 2007 Federal Poverty Guidelines.
2. Update the co-payment rates to more accurately reflect the smaller income increases typical of families receiving ICCP.
3. Allow post-secondary education as an eligible activity for four years (40 months).

The current chapter of ICCP rules will be revised 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:

There are no new fees, charges, or increases that are being imposed in 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.

This rulemaking will make necessary changes to the Idaho Child Care Program and will balance the additional expenditures with planned savings.

NEGOTIATED RULEMAKING: Several negotiated rulemaking meetings were conducted in 2007 in Boise with a committee appointed by the 2007 Legislature.

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 24, 2007.

DATED this 20th day of August, 2007.

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 16-0612-0701

000. LEGAL AUTHORITY.

~~The Idaho Department of Health and Welfare, according to Sections 56-201 through 56-233, Idaho Code, is authorized to adopt the following rules for the administration of public assistance programs. 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.~~ (7-1-99)(____)

001. TITLE AND SCOPE.

01. Title. ~~These rules are known and will be cited as~~ The title of this chapter of rules is IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program (ICCP)." (7-1-99)(____)

02. Scope. These rules provide ~~standards~~ the requirements for determining participant and provider eligibility for the Idaho Child Care Program (ICCP) and issuing child care benefit payments. (7-1-99)(____)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. (7-1-99)

003. ADMINISTRATIVE APPEALS.

01. Administrative Appeals. All administrative Appeals are governed by ~~Idaho Department of Health and Welfare Rules, provisions of IDAPA 16.05.03, Section 300, et seq.,~~ "Rules Governing Contested Cases Proceedings and Declaratory Rulings." (7-1-99)(____)

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. ABBREVIATIONS.

~~The following abbreviations apply to this chapter:~~ (7-1-99)

~~01. GED. General Equivalency Diploma. (7-1-99)~~

~~02. ICCP. Idaho Child Care Program. (7-1-99)~~

~~03. PRC. Personal Responsibility Contract. (7-1-99)~~

~~04. SSI. Supplemental Security Income. (7-1-99)~~

~~05. TAFI. Temporary Assistance for Families in Idaho. (7-1-99)~~

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: (7-1-99)()

01. Caretaker. *The person responsible for the care of a child.* **AABD.** Aid to the Aged, Blind, and Disabled. (7-1-99)()

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. ()

023. Child Day 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. (5-3-03)()

03. Child Support Income. *Any payment made by an absent parent designated to be used for the children.* (7-1-99)

04. Child(ren). *All children under eighteen (18), if they are related to the parent or caretaker as specified above. Children over eighteen (18) or older, if claimed on tax returns as a dependent by the child's caretaker relative or parent.* (7-1-99)

054. Department. The Idaho Department of Health and Welfare. (7-1-99)

065. Earned Income. ~~Gross~~ Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (7-1-99)()

076. Employment. A job paying wages or salary 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 *considered* employment. (7-1-99)()

087. 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 *provided for a child by a family*, and is arranged through a private or public agency. (7-1-99)()

~~098.~~ **Foster Child.** A child placed for twenty-four (24) hour substitute care by a private or public agency. (7-1-99)(____)

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.~~ **Fraud.** *Obtaining or attempting to obtain ICCP services for which one is not eligible or in an amount to which not entitled by means of a willfully false statement or representation, or other fraudulent device.* (7-1-99)

~~10.~~ **Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)

121. **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 ~~an individual not related to the child~~ a formal or informal agreement with the child's parent. (7-1-99)(____)

132. **Job Training and Education Program.** A program ~~recognized as a~~ designed to provide job training or education ~~program.~~ 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. (7-1-99)(____)

13. **Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (____)

~~14.~~ **Loan.** *Debt having a signed repayment agreement.* (7-1-99)

~~15.~~ **Local Market Rate for Child Care.** *Payment of child care set at the seventy-fifth percentile of the range of costs for child care in a specific area. The rate is adjusted for the age of the child, the region, and the type of child care facility. The local market rate establishes the maximum amount payable by ICCP.* (7-1-99)

~~16.~~ **Mediation.** *Process to resolve disputes between providers of child care services and parents or caretakers of children receiving child care.* (7-1-99)

011. **DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.**
The following definitions and abbreviations apply to this chapter of rules: (____)

017. **Minor Parent.** *PA parent under the age of eighteen (18). The minor parent is not considered a child for the purpose of determining eligibility for child care assistance.* (7-1-99)(____)

~~18.~~ **Related Caretaker.** *An adult caretaker, other than a parent, related to the child by blood or marriage. This includes grandparents, great-grandparents, brothers, sisters, aunts, uncles, nephews, nieces, or first cousins. Relatives by marriage also include step-siblings.* (5-3-03)

~~1902.~~ **Non-Recurring Lump Sum Income.** Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

~~20.~~ **Non-Related Caretaker.** *A person who is not related to an eligible child, who is acting in loco parentis.* (7-1-99)

~~2103.~~ **Parent or Guardian.** *PA persons legally responsible for a child (ren) because of birth, adoption, step-parent, or legal guardianship; or a person acting in loco parentis.* (7-1-99)(____)

204. **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. (5-3-03)(____)

- ~~2205.~~ **Prospective Income.** Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)
- ~~2306.~~ **Provider.** An individual, organization, agency, or other entity providing child care. (7-1-99)
- ~~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. ()
- ~~25.~~ **Resources.** Money or items that can be converted to money that can be used for family care. (7-1-99)
- ~~26.~~ **Satisfactory Progress.** A standard of progress which a participant must meet in an educational or training program. Standards are established by each individual program and must include both qualitative and quantitative measures of progress. (7-1-99)
- ~~2709.~~ **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). (5-3-03)()
- ~~10.~~ **TAFI.** Temporary Assistance for Families in Idaho. ()
- ~~28.~~ **Step Parent.** A person married to the child's parent who has no biological or adoptive relationship to the child. (7-1-99)
- ~~2911.~~ **Unearned Income.** *Income other than employment or self-employment.* Unearned income includes retirement ~~and~~ interest child support, and any income received from a source other than employment or self-employment. Money received when a resource is liquidated is unearned income during the month in which it is received. (5-3-03)()
- ~~30.~~ **Unmarried Parents.** Individuals not married to each other, but whose common child lives in the home. (5-3-03)
- ~~31.~~ **Very Low Income.** Family income less than one hundred fifty percent (150%) of the Federal Poverty Limit. (5-3-03)
- ~~32.~~ **Working.** An individual is considered working when he has a job paying wages or salary, including work paying commission or in-kind compensation. (5-3-03)
- ~~006-049.~~ **(RESERVED)**>
- ~~050.~~ **APPLICATION.**
A written application must be completed and signed by the caretaker and received by the Department. The date of the application is the date received by the Department. The caretaker shall be notified, in writing, of the approval or denial of the application and the right to appeal, if applicable. (7-1-99)
- ~~051.~~ **EFFECTIVE DATE.**
An eligible caretaker shall receive child care payments from the first day of the month of application. (7-1-99)
- ~~052-056.~~ **(RESERVED)**.
- ~~057.~~ **PARENTAL CHOICE.**
Eligible parents or caretakers may choose among all types of available child care. (7-1-99)
- ~~05812. -- 099.~~ **(RESERVED).**

THE APPLICATION AND ELIGIBILITY DETERMINATION PROCESS
(Sections 100 through 199)

100. ELIGIBILITY FOR CHILD CARE ASSISTANCE APPLICATION AND INCOME LIMITS FOR CHILD CARE BENEFITS.

~~Families must meet the following conditions of eligibility and provide verification requested by the Department before child care assistance is provided.~~ 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. In order to receive ICCP assistance the applicant must not exceed the gross income limits described in Subsections 100.01 and 100.02 of this rule: (7-1-99)()

01. Maximum Income Limits for ICCP Benefits. The maximum income limit for eligibility for payment of ICCP benefits is based on one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines. Maximum income limits by family size are as follows: ()

- a.** One thousand five hundred forty dollars (\$1,540) for a household of two (2): ()
- b.** One thousand nine hundred thirty-two dollars (\$1,932) for a household of three (3): ()
- c.** Two thousand three hundred twenty-three dollars (\$2,323) for a household of four (4): ()
- d.** Two thousand seven hundred fifteen dollars (\$2,715) for a household of five (5): ()
- e.** Three thousand one hundred six dollars (\$3,106) for a household of six (6): ()
- f.** Three thousand four hundred ninety-eight dollars (\$3,498) for a household of seven (7): ()
- g.** Three thousand eight hundred eighty-nine dollars (\$3,889) for a household of eight (8): ()
- h.** Four thousand two hundred eighty-one dollars (\$4,281) for a household of nine: and ()
- i.** Four thousand six hundred seventy-two dollars (\$4,672) for a household of 10. ()

02. Additional Household Member. Three hundred ninety-two dollars (\$392) is added to the maximum income limit for each additional family member. ()

101. RESIDENCY PARENTAL CHOICE OF CHILD CARE PROVIDER.

~~The family must live in the state of Idaho, and have no immediate intention of leaving.~~ Eligible parents may choose among the following types of child care providers available under ICCP: (7-1-99)()

- 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 related children. ()

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. CITIZENSHIP AND ALIENAGE RESIDENCY.

~~At least one (1) child must meet the citizenship and alienage requirements for the family to be eligible for child care~~

~~assistance. Any child eligible for payment must be a citizen or an alien admitted to the United States for permanent residence, or lawfully living in the United States. The family must live in the state of Idaho, and have no immediate intention of leaving.~~ (7-1-99)()

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 ~~payment~~ the child care benefit amount. ~~Each individual meeting the family criteria in Subsections 104.01 through 104.06 of these rules must be included in the family size. No individual may be considered a member of more than one (1) family in the same month. 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: (5-3-03)()

01. ~~Married Spouses~~ **Parents.** Married ~~spouses~~ parents living together in a common residence ~~are considered a family.~~ (5-3-03)()

02. **Unmarried Parents.** Unmarried parents ~~living together in a common residence are considered a family~~ who live in the same home and who have a child in common living with them. (5-3-03)()

03. ~~Tax~~ **Dependents.** Individuals who are claimed as ~~tax~~ dependents, ~~living in the home, are considered members of the family for tax purposes.~~ (5-3-03)()

04. **Minor Parent.** A minor parent and child are considered a separate family when they apply for ICCP child care benefits, even if they live with other relatives. (5-3-03)()

05. ~~Non-Related Caretaker.~~ ~~When parents make a formal or informal agreement for another individual to care for their child, the non-related caretaker is eligible to apply for benefits. The caretaker must meet all eligibility requirements.~~ **Individual Acting In Loco Parentis.** An individual acting in loco parentis who is eligible to apply for child care benefits. (5-3-03)()

06. ~~Adult Relatives.~~ ~~Adult relatives who are not parents of a common child, who reside together are considered separate families. Unrelated families living in a common residence are considered separate families.~~ (5-3-03)

105. ELIGIBLE CHILD.

~~A family must have at least one (1) eligible child. A child is eligible under the conditions listed in Subsections 105.01 through 105.04. A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions:~~ (7-1-99)()

01. **Immunizations Requirements.** ~~Eligible pre-school children must obtain immunizations according to the Department's schedule of immunizations, unless there is a religious or other exemption, or immunization would endanger the life or health of a child. Child care payments can continue during a reasonable period necessary to comply with immunization standards. Immunization records must be reviewed annually. 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.~~ (7-1-99)()

02. ~~Under Age Thirteen.~~ ~~A child whose care is being paid must be under the age of thirteen (13); or~~ **Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (7-1-99)()

a. A citizen; ()

b. Living lawfully in the United States. ()

03. ~~Age Thirteen Through Eighteen.~~ ~~A child age thirteen (13) or older must meet one (1) of the~~

~~criteria listed in Subsections 105.03.a. through 105.03.b.~~ **Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: (7-1-99)(____)

~~a. Children may receive child care benefits until the month of their eighteenth birthday if they are physically or mentally incapable of self-care, as verified by a professional third party. 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:~~ (7-1-99)(____)

~~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. Children may receive child care benefits until the month of their eighteenth birthday if a court order, probation contract, child protection or mental health case plan requires constant supervision. 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.~~ (7-1-99)(____)

~~04. Age Eighteen and Over. Children who qualify under Subsection 106.03 may receive child care benefits until the month of their nineteenth birthday if they are full-time students and are expected to complete secondary school no later than the month of their nineteenth birthday.~~ (7-1-99)

~~106.--107. (RESERVED).~~

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 these 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. (____)

108. QUALIFYING ACTIVITIES FOR CHILD CARE.

To be eligible for child care payments, a parent must need child care for one (1) of the following reasons: (4-11-06)

~~01. Child Care Needed for Employment. The parent must need child care to seek, accept, or maintain employment.~~ (4-11-06)

~~a. An unemployed parent can use the search for work as the activity qualifying them for child care assistance for a total of no more than three (3) months during a calendar year. However, when work search activities are required by the Department, the parent is not subject to this three (3) month limit.~~ (4-11-06)

~~b. For any of these three (3) months in which the parent claims to be looking for work, eighty (80) hours of work search will be counted as the qualifying activity for child care. These activity hours are used as a factor in determining the amount of child care assistance. The actual amount of payment is based on Section 305 of these rules.~~ (4-11-06)

~~c. When work search is the qualifying activity, it can not be combined with any other qualifying activity listed under Section 108 of these rules.~~ (4-11-06)

~~02. Child Care Needed for Training or Education. The parent must need child care to attend an education or training program. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care assistance. Satisfactory progress in the program must be maintained in order to continue to receive benefits.~~ (4-11-06)

~~03. Child Care Needed for Preventive Services. The parent must need child care to access preventive~~

~~services. Preventive services permit families to participate in treatment services designed to reduce or eliminate the need for out-of-home placement of a child by the Department. The Department must verify the continued need for preventive services at least every three (3) months. (4-11-06)~~

~~04. **Activities Negotiated Between the Department and Parent.** The parent must need child care to complete Personal Responsibility Contract activities negotiated between the Department and the parent. (4-11-06)~~

~~109. **INCAPACITATED PARENT.**~~

~~An incapacitated parent, unable to adequately care for the children in a two (2) parent family, is not required to have qualifying activities, as long as the other parent is participating in qualifying activities. (7-1-99)~~

~~110. **INTERIM CHILD CARE PAYMENT.**~~

~~If child care arrangements would otherwise be lost, child care may be paid under conditions listed in Subsections 110.01 and 110.02. Relative providers are not eligible for interim child care payments. (5-3-03)~~

~~01. **Employment to Begin.** If employment or education is scheduled to begin within two (2) weeks. (7-1-99)~~

~~02. **Break in Employment.** During a break in employment or education of one (1) month or less. (7-1-99)~~

~~1107. -- 199. (RESERVED).~~

QUALIFYING ACTIVITIES AND REPORTING REQUIREMENTS

(Sections 200 through 299)

200. ~~INCOME LIMIT~~ QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

~~A family's income must be less than the published OMB guidelines for one hundred fifty percent (150%) of poverty for a family of the same size. 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: (7-1-99)()~~

~~01. **Employment.** The parent is currently employed. ()~~

~~02. **Training or Education.** The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: ()~~

~~a. **On-line classes** cannot be counted as a qualifying activity for child care. ()~~

~~b. **Persons with baccalaureate degrees or who are attending post-baccalaureate classes** do not qualify for child care benefits. ()~~

~~c. **More than forty (40) months of post-secondary education** has been used as a qualifying activity. ()~~

~~03. **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. ()~~

~~04. **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. ~~COUNTABLE INCOME~~ REPORTING REQUIREMENTS FOR FAMILIES.

~~All gross earned and unearned income is counted in determining eligibility and payment amount, unless specifically excluded by rule. (7-1-99)~~

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. ~~EXCLUDED INCOME.~~

~~The following is not counted as family income. (7-1-99)~~

~~**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. (7-1-99)~~

~~**02. Income Received for Person Not Residing With the Family.** Income received on behalf of a person not living in the home is excluded. (7-1-99)~~

~~**03. Education Funds.** All educational funds including grants, scholarships, an Americorps Education Award, and federal and state work study income. (7-1-99)~~

~~**04. Assistance.** Assistance to meet a specific need from other organizations and agencies is not counted as income. (7-1-99)~~

~~**05. Lump Sum Income.** Non-recurring or lump sum income is excluded as income if 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 the maximum income listed in the Sliding Fee Schedule, the family is not eligible to receive benefits. The period of ineligibility is computed by dividing the lump sum payment into the maximum qualifying income for that family. In no case will the period of ineligibility exceed twelve (12) months. (5-3-03)~~

~~**06. Loans.** Loans with written, signed repayment agreements are not counted as income. (7-1-99)~~

~~**07. TAFI and AABD Benefits.** TAFI and AABD benefits are excluded. (7-1-99)~~

~~**08. Foster Care Payments.** Foster care payments are excluded as income. (7-1-99)~~

~~**09. VISTA Volunteers.** Living allowances and stipends paid to VISTA volunteers under P.L. 93-113, Title IV, Section 404(g) are excluded as income. (7-1-99)~~

~~10. **Income Tax Refunds/Earned Income Tax Credits.** Income tax refunds and earned income tax credits even if received with their wages are excluded as income. (7-1-99)~~

~~11. **Travel Reimbursements.** Reimbursements from employers for work related travel are excluded from income. (7-1-99)~~

~~12. **Tribal Income.** Income received from a tribe for any purpose other than direct wages are excluded from income. (7-1-99)~~

~~13. **Foster Parents Income.** Income may be excluded based on need, on a case by case basis, for foster parents when determining eligibility and sliding fee scale amounts for children in the custody of the Department. Income is counted when determining eligibility and sliding fee scale amounts for the foster parent's biological child(ren). (7-1-99)~~

~~14. **Adoption Assistance.** Adoption assistance payments are excluded from income. (5-3-03)~~

~~15. **Child Support Payments.** Court ordered child support payments made by the participant are excluded from income. Both the legal obligation to pay child support and the actual amount paid must be verified. (7-1-99)~~

~~203. **SELF-EMPLOYMENT INCOME.**~~

~~Income from self-employment is earned income. The family may choose one (1) of the calculation methods in Subsections 203.01 and 203.02 of these rules to determine income. Annualize the income if the participant has been self-employed for more than one (1) year. Average the income over the period of time the business has been operating, if the participant has been self-employed for less than one (1) year. (5-3-03)~~

~~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, anticipate self-employment income and expenses. (5-3-03)~~

~~02. **Net Self Employment Income.** Net self-employment income is calculated from gross income. Subtract these allowable expenses: (5-3-03)~~

~~a. The cost of labor paid to individuals not in the home. (5-3-03)~~

~~b. The cost of business inventory. (5-3-03)~~

~~c. The cost of material. (5-3-03)~~

~~d. The cost for rent and utilities, advertising, shipping and legal fees. (5-3-03)~~

~~e. The cost of seed and fertilizer. (5-3-03)~~

~~f. Interest paid to purchase income producing property, including real estate. (5-3-03)~~

~~g. Insurance premiums. (5-3-03)~~

~~h. Taxes paid on income producing property. (5-3-03)~~

~~i. Transportation, when a vehicle is an integral part of business activity. (5-3-03)~~

~~204.—249. (RESERVED).~~

~~250. **CHILD CARE PROVIDER LICENSING.**~~

~~All providers of child care receiving a Department subsidy must be licensed or must comply with applicable State Day Care licensing requirements under Title 39, Chapter 11, Idaho Code, with local licensing ordinances, or with tribal ordinances. If both state statutes 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. (7-1-99)~~

~~251. HEALTH AND SAFETY REQUIREMENTS.~~

~~All providers must submit a written statement that they comply with the health and safety requirements listed in Subsections 251.01 through 251.10 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. (5-3-03)~~

~~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. (7-1-99)~~

~~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. (7-1-99)~~

~~03. **Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (7-1-99)~~

~~04. **Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be stored out of the reach of children. (7-1-99)~~

~~05. **Emergency Communication.** A telephone or some type of emergency communication system is required. (7-1-99)~~

~~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. (7-1-99)~~

~~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. (7-1-99)~~

~~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. (7-1-99)~~

~~09. **Health of Provider.** Each provider shall certify that he/she does not have any physical or psychological condition that might pose a threat to the safety of a child in his/her care. (7-1-99)~~

~~10. **Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (7-1-99)~~

~~252. CHILD CARE PROVIDER AGREEMENT.~~

~~All providers shall sign and comply with a Provider Agreement made with the Department. (5-3-03)~~

~~253.—254. (RESERVED).~~

~~255. 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.~~

~~(7-1-99)~~

~~**256. PURVIEW OF CHILD PROTECTION ACT OR JUVENILE JUSTICE REFORM ACT.**~~

~~Providers must certify that they are not, through stipulation or adjudication, under the purview of the Child Protection Act, Section 16-1600, Idaho Code, or the Juvenile Corrections Act, Section 20-501 through 20-547, Idaho Code. Any provider who has an adjudicated valid child protection complaint cannot be an eligible provider. (7-1-99)~~

~~**257. 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. (7-1-99)~~

~~**258.—269. (RESERVED).**~~

~~**270. ALLOWABLE CHILD CARE COSTS.**~~

~~Care provided to an eligible child by an eligible provider is payable subject to the following conditions: (7-1-99)~~

~~**01. Payment for Employment, Seeking Employment, Training, Education, or Preventive Service Hours.** Child care must be reasonably related to the hours of the qualifying activities. Travel time is included in determining qualifying activities. (7-1-99)~~

~~**02. Family Member or Guardian Not Payable.** A parent, step-parent, or unmarried parent must not be paid for providing child care to his child. A guardian must not be paid for providing child care for a child for whom he has guardianship. (5-3-03)~~

~~**03. Provider Living at Same Address.** Child care by a child's grandparent, great-grandparent, aunt, uncle, or adult sibling living at the same address as the family will not be paid unless a condition in Subsections 270.03.a. through 270.03.c. of these rules is met. (5-3-03)~~

~~**a.** The parents' or caretakers' qualifying activity occurs when out-of-home care is not available. (5-3-03)~~

~~**b.** The family lives in an area where out-of-home care is not available. (5-3-03)~~

~~**c.** A child has a verified illness or disability. The illness or disability would place the child at risk in an out-of-home facility, or place the other children in the facility at risk. (5-3-03)~~

~~**04. One-Time Registration Fees.** One-time fees for registering a child in a child care facility are payable, 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. (5-3-03)~~

~~**271. REPORTING REQUIREMENTS FOR FAMILIES.**~~

~~Families applying for or receiving child care benefits shall report within ten (10) days the changes listed in Subsections 271.01 through 271.05 of these rules. (5-3-03)~~

~~**01. Provider Charges.** The rates charged for child care services changes. (7-1-99)~~

~~**02. Provider.** A child stops attending a child care, or is taken to another child care provider. (5-3-03)~~

~~**03. Activity.** Hours or nature of qualifying activity changes. (5-3-03)~~

~~**04. Income.** The number of hours worked or a permanent change in rate of pay. Any permanent change in monthly income of twenty five dollars (\$25) or more. (5-3-03)~~

~~**05. Change of Address.** There is a change of address for either the participant or the provider. (7-1-99)~~

~~272. REPORTING REQUIREMENTS FOR PROVIDERS.~~

~~Child care providers shall report within ten (10) days the changes listed in Subsections 272.01 through 272.05 of these rules. (5-3-03)~~

- ~~01. **Change in Provider Charges.** The provider changes the rates for child care services. (5-3-03)~~
- ~~02. **Child Stops Attending Care.** A child stops attending child care, or is taken to another child care provider. (5-3-03)~~
- ~~03. **Change of Provider Address.** There is a change in the location where child care is provided. (5-3-03)~~
- ~~04. **Change in Who Lives in Home.** Individuals providing child care in their home must report when someone moves into the home. (5-3-03)~~
- ~~05. **Intent Not to Renew License.** The provider intends to not renew his license, or other required certifications. (5-3-03)~~

~~27302. -- 299. (RESERVED).~~

FINANCIAL CRITERIA FOR ICCP ELIGIBILITY
(Sections 300 through 399)

~~300. CALCULATING A FULL MONTH'S INCOME USING ACTUAL AND PROJECTED INCOME LIMIT.~~

~~Calculate the monthly income using actual income already received during the month and income expected to be received in the month. The household and the Department must agree this is a reasonable estimate of that month's income. A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) 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>. (5-3-03)(____)~~

- ~~01. **Full Month's Income Expected from an Ongoing Source.** If no changes are expected, use the actual income received in the past thirty (30) days to project a full month's income. If changes are expected, project the income for the month with the new information. (5-3-03)~~
- ~~02. **Full Month's Income Not Expected from an Ongoing Source.** If a full month's income is not expected from an ongoing source, count the income expected for the month. If the actual amount is known, use the actual income. If the actual income is unknown, project the expected income for that month. (5-3-03)~~
- ~~03. **Full Month's Income Not Expected from a New Source.** If income is from a new source and a full month's income is not expected, count the actual income expected for the month. Do not convert the new source of income to a monthly amount. If the actual income is unknown, project the expected income for that month. (5-3-03)~~
- ~~04. **Income from Terminated Source.** If income is from a terminated source, and no additional income is expected in a future month, count the actual income received during the month. Do not convert income to a monthly amount if a full month's income from the terminated source is not expected. (5-3-03)~~
- ~~05. **Seasonal Income.** If income changes seasonally, consider the household's income from the last season and any pay changes to project the month's income. (5-3-03)~~
- ~~06. **Fluctuating Income.** When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a full month's income. (5-3-03)~~

~~07. **Income Paid as Salary.** Count income paid as salary at the expected monthly salary rate. Do not count salary at an hourly rate. (5-3-03)~~

301. ~~(RESERVED)~~ 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 to determine child care benefits. ()

302. ~~CONVERTING EXCLUDED INCOME OR EXPENSES TO A MONTHLY AMOUNT.~~

~~If a full month's income is expected, but income is received more often than monthly, convert the income to a monthly amount. If a full month's expense is expected, but is billed more often than monthly, convert the expense to a monthly amount. Use the appropriate formula in Subsections 302.01 through 302.03 of these rules. The following sources of income are not counted as family income. (5-3-03)()~~

01. ~~Weekly Amount.~~ Multiply a weekly amount by four point three (4.3). **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. (5-3-03)()**

02. ~~Bi-Weekly Amount.~~ Multiply a bi-weekly amount by two point fifteen (2.15). **Income Received for Person Not Residing With the Family. Income received on behalf of a person who is not living in the home. (5-3-03)()**

03. ~~Semi-Monthly Amount.~~ Multiply a semi-monthly amount by two (2). **Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (5-3-03)()**

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 current income limits 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 42 U.C.S. 5044, 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 foster child. Income is counted when determining eligibility for the foster parent's own 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.—304. (RESERVED).~~

303. COMPUTING NON-FARMING SELF-EMPLOYMENT INCOME.

Compute non-farming self-employment income by adding projected monthly earnings to projected capital gains and subtracting the self-employment standard deduction. ()

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: ()

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. ()

b. If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation. ()

02. Add Monthly Capital Gains Income. 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. 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 303.01 of these rules to determine the gross monthly income. ()

03. Subtract Non-Farming Self-Employment Standard Deduction. 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. ()

304. COMPUTING FARMING SELF-EMPLOYMENT INCOME.

For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 304.01 through 304.04 of these rules. ()

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: ()

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. ()

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. ()

02. Add Monthly Capital Gains Income. 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. 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 304.01 of these rules to determine the gross monthly income. ()

03. Subtract Allowable Expenses. Subtract any allowable expenses for farming self-employment, except those listed in Subsection 304.04 of these rules for expenses that are not allowed. This is the projected farming

self-employment monthly income. ()

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. ()

- a. Net losses from previous certification periods; ()
- b. Federal, State, and local income taxes; ()
- c. Money set aside for retirement; ()
- d. Work related personal expenses such as transportation to and from work; and ()
- e. Depreciation. ()

305. AMOUNT OF PAYMENT.

Child Care payments will be based on Subsections 305.01 through 305.04 of these rules. (5-3-03)

01. Payment Rate. *Payment will be based on the lower of the billed cost of child care, or the local market rate. (5-3-03)*

a. *The local market rate will be set at the seventy fifth percentile of the range of child care charges for that type of care. The rates will be established from a survey of providers of child care. (7-1-99)*

b. *Each Region has a separate local market rate. Payment rates will be determined by the location of the child care facility. (7-1-99)*

c. *If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. (7-1-99)*

d. *The rate survey will be conducted at least every two (2) years. (7-1-99)*

02. Usual and Customary Rates. *Rates charged by the child care provider must not exceed usual and customary rates charged to all families. (7-1-99)*

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. Care provided in the home of the child will be paid only when three (3) or more children are eligible and receiving payments. Fewer than three (3) children will receive payment for in-home care only when one (1) of the following special circumstances is met: (5-3-03)*

a. *Parents' or caretakers' activity occurs during times when out-of-home care is not available. (5-3-03)*

b. *The family lives in an area where out-of-home care is not available. (5-3-03)*

c. *A child has a verified illness or disability which would place the child or other children in an out-of-home facility at risk. (7-1-99)*

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. (5-3-03)*

306. (RESERVED).

307. SLIDING FEE SCHEDULES.

~~Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. (7-1-99)~~

~~**01. Poverty Rates.** Poverty rates will be the established rates published annually in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (7-1-99)~~

~~**02. Calculating Family Payment.** Families must pay the provider for child care services. Family income for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate, less the amount calculated using the sliding fee schedule listed in Table 307.03. (3-16-04)~~

~~**03. Maximum Income And Sliding Fee Schedules:**~~

FAMILY CO-PAYMENT REQUIREMENTS—ICCP SLIDING FEE SCHEDULE									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$0—\$499	7%	7%	7%	7%	7%	7%	7%	7%	7%
\$500—\$599	11%	7%	7%	7%	7%	7%	7%	7%	7%
\$600—\$699	11%	11%	7%	7%	7%	7%	7%	7%	7%
\$700—\$799	11%	11%	11%	7%	7%	7%	7%	7%	7%
\$800—\$899	21%	11%	11%	11%	7%	7%	7%	7%	7%
\$900—\$999	21%	11%	11%	11%	11%	7%	7%	7%	7%
\$1,000—\$1,099	21%	11%	11%	11%	11%	7%	7%	7%	7%
\$1,100—\$1,199	36%	21%	11%	11%	11%	11%	7%	7%	7%
\$1,200—\$1,299	36%	21%	11%	11%	11%	11%	11%	7%	7%
\$1,300—\$1,356	66%	21%	21%	11%	11%	11%	11%	7%	7%
\$1,357—\$1,399	100%	21%	21%	11%	11%	11%	11%	7%	7%
\$1,400—\$1,499	100%	36%	21%	11%	11%	11%	11%	11%	7%
\$1,500—\$1,599	100%	36%	21%	21%	11%	11%	11%	11%	11%
\$1,600—\$1,699	100%	66%	36%	21%	11%	11%	11%	11%	11%
\$1,700—\$1,706	100%	66%	36%	21%	21%	11%	11%	11%	11%
\$1,707—\$1,799	100%	100%	36%	21%	21%	11%	11%	11%	11%
\$1,800—\$1,899	100%	100%	36%	21%	21%	11%	11%	11%	11%
\$1,900—\$1,999	100%	100%	36%	36%	21%	11%	11%	11%	11%
\$2,000—\$2,056	100%	100%	66%	36%	21%	21%	11%	11%	11%
\$2,057—\$2,099	100%	100%	100%	36%	21%	21%	11%	11%	11%
\$2,100—\$2,199	100%	100%	100%	36%	21%	21%	11%	11%	11%
\$2,200—\$2,299	100%	100%	100%	36%	21%	21%	21%	11%	11%
\$2,300—\$2,399	100%	100%	100%	66%	36%	21%	21%	11%	11%

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									
\$2,400 – \$2,406	100%	100%	100%	66%	36%	21%	21%	21%	21%	41%
\$2,407 – \$2,499	100%	100%	100%	100%	36%	21%	21%	21%	21%	41%
\$2,500 – \$2,599	100%	100%	100%	100%	36%	21%	21%	21%	21%	41%
\$2,600 – \$2,699	100%	100%	100%	100%	66%	36%	21%	21%	21%	21%
\$2,700 – \$2,756	100%	100%	100%	100%	66%	36%	21%	21%	21%	21%
\$2,757 – \$2,799	100%	100%	100%	100%	100%	36%	21%	21%	21%	21%
\$2,800 – \$2,899	100%	100%	100%	100%	100%	36%	21%	21%	21%	21%
\$2,900 – \$2,999	100%	100%	100%	100%	100%	36%	36%	21%	21%	21%
\$3,000 – \$3,099	100%	100%	100%	100%	100%	66%	36%	21%	21%	21%
\$3,100 – \$3,106	100%	100%	100%	100%	100%	66%	36%	21%	21%	21%
\$3,107 – \$3,199	100%	100%	100%	100%	100%	100%	36%	21%	21%	21%
\$3,200 – \$3,299	100%	100%	100%	100%	100%	100%	36%	36%	21%	21%
\$3,300 – \$3,399	100%	100%	100%	100%	100%	100%	66%	36%	21%	21%
\$3,400 – \$3,456	100%	100%	100%	100%	100%	100%	66%	36%	21%	21%
\$3,457 – \$3,499	100%	100%	100%	100%	100%	100%	100%	36%	21%	21%
\$3,500 – \$3,599	100%	100%	100%	100%	100%	100%	100%	36%	36%	21%
\$3,600 – \$3,699	100%	100%	100%	100%	100%	100%	100%	36%	36%	21%
\$3,700 – \$3,799	100%	100%	100%	100%	100%	100%	100%	66%	36%	21%
\$3,800 – \$3,806	100%	100%	100%	100%	100%	100%	100%	66%	36%	21%
\$3,807 – \$3,899	100%	100%	100%	100%	100%	100%	100%	100%	36%	21%
\$3,900 – \$3,999	100%	100%	100%	100%	100%	100%	100%	100%	36%	21%
\$4,000 – \$4,099	100%	100%	100%	100%	100%	100%	100%	100%	66%	21%
\$4,100 – \$4,156	100%	100%	100%	100%	100%	100%	100%	100%	66%	21%
\$4,157 – \$4,299	100%	100%	100%	100%	100%	100%	100%	100%	100%	21%

* Maximum income for ICCP benefits:-
 \$1,356 for household of 2-
 \$1,706 for household of 3-
 \$2,056 for household of 4-
 \$2,406 for household of 5-
 \$2,756 for household of 6-
 \$3,106 for household of 7-
 \$3,456 for household of 8-
 \$3,806 for household of 9-
 \$4,156 for household of 10-

~~*Maximum Income (or Eligibility for Payment) Based on 150% of Poverty (1998 Poverty Tables). (3-16-04)~~

308. ACTION ON CHANGES.

~~Action on reported changes must be taken as listed in Subsections 308.01 through 308.03 of these rules. (5-3-03)~~

~~01. **Change in Income or Hours of Activity.** If a change in income or hours of qualified activity is reported, and results in a decrease in the subsidy amount, the change becomes effective the month following the month the change is reported. (5-3-03)~~

~~02. **Change in Income or Hours of Activity and Billed Amount.** If changes in the income or hours of qualified activity, and the billed amount of child care, are reported and result in a decrease in the subsidy amount, the change can be made effective in the current month. (5-3-03)~~

~~03. **Changes Resulting in an Increase.** Changes resulting in an increase in the subsidy amount must be acted on for the current month. (5-3-03)~~

309. REDETERMINATION.

~~Eligibility must be redetermined in all cases as listed in Subsections 309.01 through 309.03 of these rules. (5-3-03)~~

~~01. **Work Search.** Eligibility for individuals participating in work search must be redetermined every thirty (30) days. (5-3-03)~~

~~02. **Preventive Services.** Eligibility for cases where child care is needed for preventive services must be redetermined every three (3) months. (5-3-03)~~

~~03. **All Other Cases.** Eligibility for all other cases must be redetermined at least every six (6) months. (5-3-03)~~

310. COMPLAINT PROCEDURE.

~~The Department shall maintain a record of substantiated parental complaints. Information regarding substantiated parental complaints shall be made available to the public on request, in accordance with the Idaho Public Records Act. (7-1-99)~~

311. (RESERVED).

312. OVERPAYMENTS AND RECOVERY.

~~Overpayments may occur for child care services as the result of agency error, 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 overpayments based on agency error may be pursued from parents or providers where the overpayment is one hundred dollars (\$100), or more. Overpayments due to IPV or fraud must be recovered in full. The Department will determine overpayments. (5-3-03)~~

~~01. **Providers Must Repay.** Providers must repay overpayments resulting from their failure to report changes within time limits. Repayment schedules will be negotiated with the Department. Failure to comply with the negotiated repayment agreement will result in disqualification of the provider. Disqualification will continue until repayment is made or a new repayment agreement is negotiated. (5-3-03)~~

~~02. **Parents Must Repay.** Parents must repay overpayments resulting from their failure to report changes within time limits. Repayment schedules will be negotiated with the Department. Failure to comply with the negotiated repayment agreement will result in disqualification of the family. Disqualification will continue until repayment is made or a new repayment agreement is negotiated. (5-3-03)~~

313. INTENTIONAL PROGRAM VIOLATIONS (IPV).

~~An IPV is an intentionally false or misleading action or statement as defined in Subsections 313.01 through 313.03 of these rules. An IPV will be 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.~~ (5-3-03)

~~01. **False Statement.** An individual makes a false statement to the Department, either orally or in writing, to participate in the Idaho Child Care Program.~~ (5-3-03)

~~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.~~ (5-3-03)

~~03. **Misrepresentation of Facts.** An individual misrepresents facts to the Department, either orally or in writing, to participate in the Idaho Child Care Program.~~ (5-3-03)

~~04. **Concealing Facts.** An individual conceals or withholds facts to participate in the Idaho Child Care Program.~~ (5-3-03)

314. PENALTIES FOR AN IPV.

~~When the Department makes an IPV determination, the entire family, or the child care provider, is ineligible for the period of time listed in Subsections 314.01 through 314.03 of these rules.~~ (5-3-03)

~~01. **First Offense.** Twelve (12) months for the first IPV or fraud offense, or the length of time specified by the court.~~ (5-3-03)

~~02. **Second Offense.** Twenty four (24) months for the second IPV or fraud offense, or the length of time specified by the court.~~ (5-3-03)

~~03. **Third Offense.** Permanent disqualification for the third or subsequent IPV or fraud offense, or the length of time specified by the court.~~ (5-3-03)

315. UNDERPAYMENT.

~~Supplemental payment shall be made to a family entitled to an additional payment.~~ (5-3-03)

316. FUNDING RESTRICTIONS.

~~If a funding shortfall is projected, the Department shall take action to ensure the program operates within financial resources.~~ (5-3-03)

317. CONFIDENTIALITY.

~~Information received by ICCP from families is subject to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (7-1-99)

305. -- 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, 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. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment.. ()

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 one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines 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 include the families' co-payments and any charges not paid by the Department. Family income and activity 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: ()

03. ICCP Sliding Fee Schedule.

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	Monthly Income limits								
7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399	\$1,499
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	Monthly Income limits								
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

()

503. (RESERVED).

504. 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. ()

505. -- 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. Preventive Services. The Department must redetermine eligibility every three (3) months for each family in which child care is needed for preventive services. ()

02. 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 808 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 808)

800. CHILD CARE PROVIDER LICENSING.

All providers of child care who receive a Department subsidy must be licensed or 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 Extinguishers, 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 must 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 must 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 must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. ()

10. Child Abuse. Providers must report suspected child abuse to the appropriate authority. ()

803. TEMPORARY REGISTRATION OF AN ICCP PENDING COMPLETION OF THE HEALTH DISTRICT INSPECTION.

The Department may issue a temporary registration to an ICCP provider applicant pending completion of the necessary Health District inspection and CPR/First Aid Certification. All temporary ICCP registration will be issued under the following conditions: ()

01. Length of Temporary Registration. A temporary registration will be issued for a period of time not to exceed ninety (90) days, unless otherwise extended by the Department. ()

02. Applicants Must Sign a Provider Agreement. All ICCP provider applicants must sign the ICCP provider agreement prior to issuance of a temporary registration. ()

804. CHILD CARE PROVIDER AGREEMENT.
All providers must sign and comply with a provider agreement. ()

805. CONVICTION OR WITHHELD JUDGMENT.
A child care provider must sign a self-declaration attesting he has not been convicted or received a withheld judgement for any of the following crimes: homicide; kidnaping; arson; assault and battery; sexual abuse of a child; a sex crime as defined in Chapter 66, Title 18, Idaho Code; rape as defined in Chapter 61, Title 18, Idaho Code; injuring

a child as defined in Section 18-1501, Idaho Code; selling or bartering a child as defined in Section 18-1511, Idaho Code; sexually abusing a child as defined in Section 18-1506, Idaho Code; sexually exploiting a child as defined in Section 18-1507, Idaho Code; or any similar provision in another jurisdiction. ()

806. 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 substantiated child protection complaint cannot be a provider. ()

807. 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. ()

808. 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. ()

~~31809~~. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-0702 (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 17, 2007.

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, higher education stakeholders, advocacy group stakeholders, House and Senate Health and Welfare Committees, and the Idaho Childcare Advisory Panel to:

1. Require non-working students to pay a 31% co-pay; and
2. Require Idaho Child Care Program (ICCP) applicants to cooperate with child support

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

This rulemaking imposes an increase in the co-payment for child care for non-working students requiring them to pay a 31% co-payment that is equal to or less than the average co-payment paid by working students.

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: Several negotiated rulemaking meetings were conducted in 2007 in Boise with a committee appointed by the 2007 Legislature.

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 24, 2007.

DATED this 22nd day of August, 2007.

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 16-0612-0702

103. ~~(RESERVED)~~ **COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.**

If a minor child has a non-custodial parent, the biological or adoptive parent, or other individual who lives with the child and exercises parental control, must cooperate in establishing paternity for the child and obtaining child support. ()

01. Providing All Information. “Cooperation” includes providing all information to identify and locate the non-custodial parent. At a minimum, the first and last name of the non-custodial parent and at least two (2) of the following pieces of information must be provided. ()

- a. Birth date; ()
- b. Social Security Number; ()
- c. Current address; ()
- d. Current phone number; ()
- e. Current employer; ()
- f. Make, model, and license number of any motor vehicle owned by the non-custodial parent; and ()
- g. Name, phone numbers and addresses of the parents of the non-custodial parent. ()

02. Established Case for Custodial Parent. After Child Support Services (CSS) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. ()

03. Failure to Cooperate. ()

a. Failure to cooperate includes failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by CSS. ()

b. When a parent or individual fails to cooperate in establishing paternity and obtaining support, the family is not eligible to participate in the Idaho Child Care Program. ()

04. Exemptions From Cooperation Requirement. The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided. ()

a. Good cause for failure to cooperate in obtaining support is: ()

i. Proof the child was conceived as a result of incest or forcible rape; ()

ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and ()

iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. ()

b. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. ()

c. The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist the parent will be notified that he is not eligible to receive Idaho Child Care program benefits, until child support cooperation as been obtained. ()

(BREAK IN CONTINUITY OF SECTIONS)

503. ~~(RESERVED)~~ NON-WORKING STUDENT CO-PAYMENT REQUIREMENTS.

A post-secondary student who does not work will be required to pay a thirty-one percent (31%) co-payment. A post-secondary student who works at least ten (10) hours per week will have a co-payment based on his total family income. A student who is finishing high school, taking English as a second language or GED courses will be excluded from the requirement to pay a thirty-one percent (31%) co-payment and will instead have a co-payment based only on his income. ()

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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 24, 2007, unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
**** Indicates that a public hearing has been scheduled.**

IDAPA 02 - DEPARTMENT OF AGRICULTURE **PO Box 790, Boise, ID 83701-0790**

02-0104-0701, *Rules Governing the Idaho Preferred® Promotion Program.* Clarifies product qualification requirements for processed products.

****02-0420-0701, *Rules Governing Brucellosis.*** (Temp & Prop) Repeals certain requirements on cattle exported from Idaho to reflect the upgrade in Idaho's brucellosis status from "Class A" to "Class Free".

****02-0430-0701, *Rules Governing Nutrient Management.*** (Temp & Prop) New chapter provides for certification of soil samplers for nutrient management purposes on cattle operations; criteria for soil sample collection; and penalty provisions.

02-0633-0701, *Organic Food Products Rules.* Incorporates by reference amendments to 7 CFR part 205, National Organic Program.

IDAPA 03 - IDAHO STATE ATHLETIC COMMISSION **1109 Main St. Ste. 220, Boise, ID 83702**

03-0101-0701, *Rules of the State Athletic Commission.* Changes comply with statutory changes; adds definitions; removes obsolete language; revises contract provisions; removes requirements for passbook; changes licensing information and references for boxer to combatant; clarifies surety bond, event approval, admission rules, complimentary and other tickets, and martial arts; deletes amateur boxing.

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS **P.O. Box 83720, Boise, ID 83720-0285**

05-0101-0701, *Rules for Contract Providers.* Corrects references to juvenile offender; clarifies incident reporting, reports, recordkeeping, training, room restrictions, and use of force and adds Prison Rape Elimination Act compliance sections.

05-0102-0701, *Rules and Standards for Secure Juvenile Detention Center.* Clarifies that certificate is issued to juvenile detention centers instead of a license and corrects reference to female juvenile offenders.

05-0103-0701, *Rules of the Custody Review Board.* Formalizes the use of Board member alternates; clarifies board's power and duties regarding determinations and reconsiderations.

IDAPA 07 - DIVISION OF BUILDING SAFETY **PO Box 83720, Boise, ID 83720**

07-0101-0701, *Rules Governing Electrical Inspection Tags.* Allows for copies of forms to be used in lieu of

specified pages of multi-part forms, delivery of permit copies through alternative means, and the transacting of business via the Internet.

07-0102-0701, Rules Governing Fees for Electrical Inspections. Adopts a common fee basis for electrical, plumbing, and HVAC permits based on the square footage of the residence and associated outbuildings constructed at one time.

07-0103-0701, Rules of Electrical Licensing and Registration - General. Requires the owner or qualified employee of an applicant for an electrical contractor license to be licensed as a master electrician. The proposed changes are effective 7/1/08 and exempt existing contractors until a new supervising electrician is designated.

07-0104-0701, Rules Governing Electrical Specialty Licensing. Clarifies that the owner or qualified employee of an applicant for an electrical specialty contractor license be licensed as a supervising specialty journeyman.

07-0106-0701, Rules Governing the Use of National Electrical Code. The Electrical Board incorporates by reference the 2008 National Electrical Code, with amendments reflecting the best judgment of the Board.

07-0107-0701, Rules Governing Continuing Education Requirements. Defines the requirements for electrical continuing education sponsors, courses, and instructors.

07-0203-0701, Rules Governing Permit Fee Schedule. Adopts a new square footage-based permit fee schedule for new residential construction, and also imposes an increased permit fee schedule for non-residential construction.

07-0205-0701, Rules Governing Plumbing Safety Licensing. The proposed change is needed to clarify and specify the permitted scope of work for appliance plumbing specialty licensing.

07-0207-0701, Rules Governing Civil Penalties. Clarifies that a person holding valid plumbing contractor license is not subject to certain civil penalties.

****07-0303-0701, Rules For Modular Buildings.** (Temp & Prop). Complies with Senate Bill No. 1155 and establishes fees, inspection baselines, and enforcement guidelines for modular buildings

07-0402-0701, Safety Rules for Elevators, Escalators, and Moving Walks. Incorporates by reference current editions of the applicable codes along with applicable amendments and updates.

07-0501-0701, Public Contractors License Board. Complies with HB 139 and consolidates two existing specialty construction categories that involve HVAC work into one.

07.07.07 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems.

07-0701-0701, Provides an alternative for someone who has experience and knowledge from sources other than those listed in the current minimum requirements to obtain a HVAC Specialty Hearth Installer license.

07-0701-0702, Establishes a specialty HVAC license for waste oil heating equipment installers.

07-0701-0703, Establishes a specialty HVAC license for fuel gas piping installers.

07-0701-0704, Adopts a common fee basis for electrical, plumbing, and HVAC permits based on the square footage of the residence and associated outbuildings constructed at one time.

**IDAPA 08 - STATE BOARD OF EDUCATION
PO Box 83720, Boise, ID 83720-0037**

08.01.05 - Rules Governing the Idaho Promise Scholarship Program

08-0105-0701, (Temp & Prop) Repeal of chapter.

08-0105-0702, (Temp & Prop) Rewrite of chapter allows students who have been home-schooled to apply for this scholarship.

08.02.02 - Rules Governing Uniformity

****08-0202-0707,** (Temp & Prop) Changes minimize duplication of accrediting efforts between the State and the NAAS; reduce state costs by making full use of the services of the NAAS; allows accreditation to be optional at the elementary levels.

****08-0202-0708**, (Temp & Prop) Allows issuance of 3-year interim certificate to Idaho-trained educators whose certificates have expired and educators holding current certificates from recognized, accredited foreign institutions.

08.02.03 - Rules Governing Thoroughness

08-0203-0704, Updates definitions, eliminate redundant and outdated language; includes all assessments in Idaho's state system.

****08-0203-0705**, Adds new math and science graduation requirements for the graduating class of 2013 that include 2 credits of Algebra I, 2 credits of Geometry and 2 additional math credits taken in a student's senior year of high school.

08-0204-0701, Rules Governing Public Charter Schools. Requires public charter school petitioners to address or respond to the findings of the State Department of Education's sufficiency review and include said responses, in writing, with the petition upon submission to an authorized chartering entity.

**IDAPA 11 - IDAHO STATE POLICE
PO Box 700, Meridian, ID 83680-0700**

11-1101-0701, Rules of the Idaho Peace Officer Standards and Training Council. Clarifies to whom the rules apply; updates and adds definitions; updates minimum vision standards; establishes how long a medical exam is valid; allows open campus for select basic academies; allows vo-tech program coordinators to be eligible for certification; allows Idaho POST-certified peace officers to maintain their certifications while employed as tribal officers with federally recognized Indian tribes within Idaho; removes limitation on college credits; establishes challenge procedure for vo-tech law enforcement program graduates.

11-1104-0701, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. (Temp & Prop) Clarifies what documentation is acceptable as proof of citizenship; rewards education and experience standards; allows for minor hearing deficiencies to be waived by the POST Executive Director rather than the POST Hearing Board; updates minimum vision standards; establishes how long a medical exam is valid; adds firearms qualification requirement for Probation and Parole officers.

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION
P.O. Box 25, Boise, ID 83707**

13-0104-0701, Rules Governing Licensing. (Temp & Prop) Amends references to the Disabled Persons Motor Vehicle Permit License; amends the outfitter allocation rule to clarify the allocation process, to address outfitter and legislative committee concerns; changes references to the Clearwater deer tag to the White-tailed deer tag.

13-0108-0701, Rules Governing the Taking of Big Game in the State of Idaho. (Temp & Prop) Allows for lighted reticles powered by battery or tritium for telescopic sights; increases let-off restriction for compound bows; changes the minimum length and weight of arrows and bolts; adds Units 49, 57 and 59 to the list of Big Game Management Units with motorized vehicle use restrictions; deletes controlled hunt boundary descriptions which are set by proclamation and published in the hunting brochure. Muzzleloaders changes include: loose powder only (pelletized powders are prohibited); projectiles must be within a minimum diameter of the bore diameter; an exposed pivoting hammer and exposed ignition system for muzzleloader seasons; and prohibits 209 primers for muzzleloader seasons.

13-0109-0701, Rules Governing the Taking of Game Birds in the State of Idaho. (Temp & Prop) Increases number and type of turkey tags available; allows Department sponsored youth waterfowl hunts at the Hagerman Wildlife Management Area; amend references to the WMA pheasant permit to the WMA Upland Game Bird Permit; deletes obsolete hunting area descriptions for Chukar Partridge, Gray Partridge, and Quail.

13-0112-0701, Rules Governing Commercial Fishing in the State of Idaho. (Temp & Prop) Amends commercial species list to add Lake whitefish, delete several species, and correct the names of several species; allows for the use of gill nets and defines gill net requirements.

13-0117-0701, Rules Governing the Use of Bait for Taking Big Game Animals. Clarifies definition of allowable bait to be consistent with the trapping rules.

**IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

PO Box 83720, Boise, ID 83720-0012

15-0201-0701, Federal Laws and Regulations. Repeal of chapter.

15-0202-0701, Vocational Rehabilitation Services. Incorporates by reference all applicable federal laws and regulations governing the provision of Vocational Rehabilitation Services and updates procedural and practice requirements relating to the provision of services to eligible clients.

15-0203-0701, Rules Governing the Independent Living Program. New chapter incorporates by reference all applicable federal laws and regulations governing the provision of rehabilitation services relating to the federally-mandated Independent Living Program and includes procedural and practice requirements governing provision of said services.

15-0204-0701, Rules Governing the Prevention of Blindness and Sight Restoration Program. Sets forth the procedural and practice requirements for the Prevention of Blindness and Sight Restoration Program.

DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**PO Box 83720, Boise, ID 83720-0066**

15-0401-0702, Rules of the Division of Human Resources and Personnel Commission. Changes definitions: veterans preference; compensation of employees; moving expense reimbursement; probationary period for acting and temporaries employees; performance evaluation; military leave; overtime for executives; and bone marrow and organ donor leave to comply with new code provisions.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**PO Box 83720, Boise, ID 83720-0036**

16-0208-0701, Vital Statistics Rules. Adds advanced practice professional nurses and physician assistants to the list of those legally authorized to sign death and stillbirth certificates and authorize the final disposition and removal of a dead body or stillborn fetus in compliance with SB 1069 and adds a reference to the official form required for updating a death certificate.

16-0215-0701, Immunization Requirements for Idaho School Children. Specifies that the 5th dose of diphtheria, tetanus and pertussis (DTaP) and the 2nd dose of measles, mumps and rubella (MMR) are only for children entering kindergarten during or after the 2005-2006 school year as originally intended.

16.03.01 - Eligibility for Health Care Assistance for Families and Children.

16-0301-0702, (Temp & Prop) Updates the Transitional Medicaid reporting time lines and requirements for continuing Transitional Medicaid and establishes the effective dates for participant to request continued benefits pending a fair hearing decision; clarifies the types of acceptable documentation for citizenship and identity requirements.

16-0301-0703, Revises the reporting requirements so that Medicaid participants must report any changes in their circumstances that may affect their benefits by the 10th of the month following the month in which the change occurred.

****16-0303-0701, Rules Governing Child Support Services.** (Temp & Prop) Imposes a twenty-five dollar (\$25) annual fee upon the custodial parent receiving child support enforcement services in each child support case in which an individual has never received assistance under a program funded under the Temporary Assistance for Needy Families (TANF) program and when the state has collected more than \$500 in support during the Federal Fiscal Year.

16-0304-0701, Rules Governing the Food Stamp Program in Idaho. Standardizes the monthly reporting date for all food stamps households to report any changes in their circumstances to make change reporting easier; refers to federal regulations regarding timely filing of applications and proration of food stamp benefits when a food stamp applicant delays the processing of the application.

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled.

16-0305-0703, Defines long-term care, partnership policy, pension funds, and retirement funds; adds a life estate table to determine asset value at the time of transfer; clarifies how the community spouse resource allowance is determined when one of the couple is long-term care participant and clarifies the penalty exceptions for asset transfers.

****16-0305-0704**, (Temp & Prop) Changes aligns Idaho Medicaid rules with federal regulations; uses federal terminology for a deemed newborn child; expand the types of documentation that can be used to establish citizenship and identity and exempts additional groups from the requirements; allows participant to request continued benefits pending the fair hearing who he disagrees with an eligibility decision; allows an individual to become eligible for long-term care who would otherwise be over the income limit if the income is placed in trust the same month it is received.

16-0306-0701, *Rules Governing Refugee Medical Assistance*. Repeal of chapter.

16-0306-0702, *Refugee Medical Assistance*. Chapter rewrite increases the accountability, consistency, accuracy, and efficiency and changes the income limits for those eligible.

16-0308-0701, *Rules Governing Temporary Assistance for Families in Idaho*. Aligns the methodology for calculating self-employment income for TAFI eligibility with that used in the Food Stamp Program and uses a standard 50% deduction from gross income instead of using gross receipts minus allowable expenses.

16.03.09 - Medicaid Basic Plan Benefits.

16-0309-0702, Defines and describes the methodology used for determining reimbursement rates for new and existing Federally Qualified Health Centers including when they make changes in the scope of services they provide.

16-0309-0703, Clarifies that the floor calculation for hospitals with more than forty beds is 81.5% of Medicaid costs, and the floor calculation for hospitals with forty or fewer beds is 96.5% of Medicaid costs.

16-0309-0704, Outlines the circumstances under which a surgically implanted hearing aid will be authorized and updates a citation to EPSDT relating to hearing aids.

****16-0309-0705**, (Temp & Prop) Adds a Chronic Disease Management benefit for Medicaid participants with certain chronic diseases and adds the methodology for determining the reporting requirements for each disease.

****16-0309-0706**, Allows occupational therapists and speech-language pathologists to become Medicaid providers and bill Medicaid directly; allows Home Health Agencies to bill for speech-language pathology services provided to participants in their homes; and limits participant's occupational therapy to 25 visits and speech-language pathology services to 40 visits per calendar year without prior authorization.

****16-0310-0704**, *Medicaid Enhanced Plan Benefits*. Deletes the limit of 250 speech therapy sessions per calendar year and establishes a new limit of 40 sessions per calendar year and a new limit of 25 sessions per calendar year for occupational therapy sessions; and make language consistent used to refer to physical therapy, occupational therapy, and speech-language pathology services.

16.06.12 - Governing the Idaho Child Care Program.

16-0612-0701, Increase the current income limits to 135% of the 2007 Federal Poverty Guidelines; updates the co-payment rates for families receiving ICCP; allows post-secondary education as an eligible activity for four years (40 months).

16-0612-0702, Requires non-working students to pay a 31% co-pay; and require ICCP applicants to cooperate with child support.

IDAPA 17 - INDUSTRIAL COMMISSION

PO Box 83720, Boise, ID 83720-0041

****17-0208-0702**, *Miscellaneous Provisions*. Establishes a medical fee schedule and reimbursement methodology pursuant to Worker's Compensation law for providers, sureties, and employers while maintaining budget neutrality.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0044

18-0144-0701, *Schedule of Fees, Licenses and Miscellaneous Charges*. Eliminates discounted fee and returns to the uniform renewal rate of \$80 for adjusters, producers and surplus lines brokers.

18-0150-0701, *Adoption of the 2003 International Fire Code*. (Temp & Prop) Incorporates by reference the 2006 International fire Code.

18-0153-0701, *Continuing Education*. Updates procedures to allow licensee to download continuing education (CE) courses and course completion rosters via the Internet so that they are credited prior to the license renewal date;

eliminates exemptions to CE and added credits because of a reduction in the CE credit hour requirements from forty to twenty four to meet national uniformity standards.

18-0160-0701, Long-Term Care Insurance Minimum Standards. Clarifies training requirements for insurance producers selling long term care insurance policies that qualify for Idaho's Long Term Care Insurance Partnership Program.

Please refer to the Idaho Administrative Bulletin, **October 3, 2007, Volume 07-10** 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

**FOR THE ABOVE LINK TO WORK YOU HAVE
TO BE CONNECTED TO THE INTERNET**

**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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