

# IDAHO ADMINISTRATIVE BULLETIN

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October 1, 2008 -- Volume 08-10

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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 rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of 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 Notice of Rulemaking 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 07-1 refers to the first Bulletin issued in calendar year 2007; Bulletin 08-1 refers to the first Bulletin issued in calendar year 2008. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 08-1 refers to January 2008; Volume No. 08-2 refers to February 2008; and so forth. Example: The Bulletin published in January 2008 is cited as Volume 08-1. The December 2007 Bulletin is cited as Volume 07-12.*

## **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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking 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 "-", (38-0501-0801). 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. 38-0501-0801"

"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).

"0801" 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 2008. A subsequent rulemaking on this same rule chapter in calendar year 2008 would be designated as "0802". The docket number in this scenario would be 38-0501-0802.

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 2008**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
08-1	January 2008	<b>*November 14, 2007</b>	January 2, 2008	January 23, 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	<b>**August 20, 2008</b>	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, 2008

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
09-1	January 2009	<b>*November 14, 2008</b>	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
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09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	<b>**August 28, 2009</b>	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

***\*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.***

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 01</b>	<b>Accountancy</b> , Board of
<b>IDAPA 38</b>	<b>Administration</b> , Department of
<b>IDAPA 44</b>	<b>Administrative Rules Coordinator</b> , Office of the
<b>IDAPA 02</b>	<b>Agriculture</b> , Idaho Department of
<b>IDAPA 40</b>	<b>Arts</b> , Idaho Commission on the
<b>IDAPA 03</b>	<b>Athletic Commission</b>
<b>IDAPA 04</b>	<b>Attorney General</b> , Office of the
<b>IDAPA 53</b>	<b>Barley Commission</b> , Idaho
<b>IDAPA 51</b>	<b>Beef Council</b> , Idaho
<b>IDAPA 07</b>	<b>Building Safety</b> , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
<b>IDAPA 43</b>	<b>Canola and Rapeseed Commission</b> , Idaho
<b>IDAPA 28</b>	<b>Commerce</b> , Idaho Department of
<b>IDAPA 06</b>	<b>Correction</b> , Board of
<b>IDAPA 19</b>	<b>Dentistry</b> , Board of
<b>IDAPA 08</b>	<b>Education</b> , Board of and Department of
<b>IDAPA 10</b>	<b>Engineers and Land Surveyors</b> , Board of Professional
<b>IDAPA 58</b>	<b>Environmental Quality</b> , Department of
<b>IDAPA 12</b>	<b>Finance</b> , Department of
<b>IDAPA 13</b>	<b>Fish and Game</b> , Department of
<b>IDAPA 14</b>	<b>Geologists</b> , Board of Registration of Professional
<b>IDAPA 15</b>	<b>Governor</b> , Office of the Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Dispensary (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 48</b>	<b>Grape Growers and Wine Producers Commission, Idaho</b>
<b>IDAPA 16</b>	<b>Health and Welfare, Department of</b>
<b>IDAPA 41</b>	<b>Health Districts, Public</b>
<b>IDAPA 45</b>	<b>Human Rights Commission</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>
<b>IDAPA 18</b>	<b>Insurance, Department of</b>
<b>IDAPA 05</b>	<b>Juvenile Corrections, Department of</b>
<b>IDAPA 09</b>	<b>Labor, Idaho Department of</b>
<b>IDAPA 20</b>	<b>Lands, Department of</b>
<b>IDAPA 30</b>	<b>Libraries, Commission for</b>
<b>IDAPA 52</b>	<b>Lottery Commission, Idaho State</b>
<b>IDAPA 22</b>	<b>Medicine, Board of</b>
<b>IDAPA 23</b>	<b>Nursing, Board of</b>
<b>IDAPA 24</b>	<b>Occupational Licenses, Board of (24.20)</b> Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians (24.03) Contractors Board, Idaho State (24.21) Cosmetology, Board of (24.04) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho (24.22) Morticians, Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Optometry, Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, Board of (24.11) Professional Counselors and Marriage & Family Therapists, Board of (24.15) Psychologist Examiners, Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of (24.19) Social Work Examiners, Board of (24.14) Speech and Hearing Services Licensure Board(24.23)
<b>IDAPA 25</b>	<b>Outfitters and Guides Licensing Board</b>
<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>
<b>IDAPA 27</b>	<b>Pharmacy, Board of</b>
<b>IDAPA 11</b>	<b>Police, Idaho State</b>

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 29</b>	<b>Potato Commission, Idaho</b>
<b>IDAPA 55</b>	<b>Professional-Technical Education, Division of</b>
<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho (PERSI)</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>
<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>
<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters, Board of Certified</b>
<b>IDAPA 36</b>	<b>Tax Appeals, Board of</b>
<b>IDAPA 35</b>	<b>Tax Commission, State</b>
<b>IDAPA 39</b>	<b>Transportation Department, Idaho</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
<b>IDAPA 21</b>	<b>Veterans Services, Division of</b>
<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-0801

#### 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 15, 2008.

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 will define product qualifications for lamb, pork, poultry and other meats not already defined in the existing rule. Approval for use of logo section will be amended to correct duplication concerning submission of samples.

**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 Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants.

**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 22, 2008.

DATED this 7th day of August, 2008.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-0801

#### 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 bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (4-2-08)

**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. (4-2-08)

**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. Lamb and Lamb Products.** Lamb and lamb products shall come from sheep that: ( )

**a.** Are born, raised and harvested in the United States. No lambs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. ( )

**b.** Have grazed or been fed in Idaho at least three (3) months prior to harvest. The three (3) months need not be contiguous, but must be verifiable. ( )

**c.** Are processed at approximately one (1) year of age or less and qualify as lamb or carcasses from older animals, identified as mutton by USDA inspectors, may qualify if they have met requirements in Subsection 200.07.b. ( )

**08. Pork and Pork Products.** Pork and pork products shall come from hogs that: ( )

**a.** Are born, raised and harvested in the United States. No hogs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. ( )

**b.** Are raised in or processed in Idaho. ( )

- c.** Are processed at less than one (1) year of age in a federally inspected plant. ( )
- 09. Poultry and Poultry Products.** Poultry and poultry products shall come from fowl that: ( )
- a.** Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. ( )
- b.** Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised and processed in Idaho, may qualify for Idaho Preferred®. ( )
- c.** Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. ( )
- 10. Game Meat.** Game meat shall: ( )
- a.** Come from domestic elk that are born, raised and processed in Idaho and originate from a facility licensed by the Idaho State Department of Agriculture. ( )
- b.** Come from domestic buffalo that are born, raised and processed in Idaho. ( )
- c.** Be processed in a federally inspected plant. ( )
- ~~07~~**11. 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~~**12. Exceptions.** The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

**201. -- 299. (RESERVED).**

**300. LOGO.**

The Idaho Preferred® logo has been registered ~~or filed for registration~~ by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (3-30-07)( )

**01. Description of the Idaho Preferred® Logo.** The Idaho Preferred® logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (3-30-07)

**02. Graphic Depiction of the Idaho Preferred® Logo:**



®

(3-30-07)

**03. Approval for Use of Logo.** Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. *Participants must provide a sample of the finished packaging, labels, flyers or promotional materials to the Department.* (3-30-07)(\_\_\_\_)

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-0801

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2009 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 71-111, 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.

1. To adopt by reference the date specific standard ASTM D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel";
2. To state in rule that the specifications for gasoline blended with ethanol be no more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency; and
3. To adopt by reference the 2008 edition of NIST Handbook 44, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 2, 2008 Idaho Administrative Bulletin, Vol. 08-7 pages 15 through 17. No comments concerning the proposed rule were received during the comment period.

**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 Tom Schafer, Section Manager, at 332-8690.

DATED this 11th day of August, 2008.

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

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#### DOCKET NO. 02-0214-0801 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-7, July 2, 2008, pages 17 through 17.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2009 Idaho State Legislature for final adoption.

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**

**02.04.03 - RULES GOVERNING ANIMAL INDUSTRY**

**DOCKET NO. 02-0403-0801**

**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 25-207, 25-210, 25-212, Idaho Code.

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

**Wednesday, October 15, 2008 -- 7:00 pm to 7:30 pm**

**IDAHO DEPARTMENT OF AGRICULTURE  
2270 Old Penitentiary Road  
Boise, ID 83712**

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

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

Idaho's equine industry has expressed a desire for ISDA to place Equine Viral Arteritis (EVA), a viral disease of equids (horses, mules, asses) on the State Veterinarian's Reportable Disease List in order to have clear authority to prevent and control the disease. EVA causes abortions in mares and creates a carrier state in stallions. The USDA's EVA Uniform Methods and Rules will be incorporated by reference. Other incorporated reference documents are updated to the latest versions. A new form of equine herpes virus was added to USDA's list of notifiable diseases and needs to be added to Idaho's notifiable disease list to enable the Division of Animal Industries to monitor and report an occurrence in the state. The rule also adds ponies and zebras to the definition of equidae.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Sections 67-5220, Idaho Code, informal negotiated rulemaking was conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton, 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 22, 2008.

DATED this 18th day of August, 2008.

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. 02-0403-0801

004. INCORPORATION BY REFERENCE.

01. **Incorporated Documents.** IDAPA 02.04.03 incorporates by reference the following documents: (5-3-03)
- a. The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003. (3-30-07)
- b. National Poultry Improvement Plan and Auxiliary Provisions, February 12, 2007~~8~~. (~~4-2-08~~)( )
- c. Title 9, Parts 145, 146, 147, and 161, CFR, January 1, 2006~~8~~. (~~3-30-07~~)( )
- d. The Compendium of Animal Rabies Prevention and Control, 2007~~8~~. (~~4-2-08~~)( )
- e. Equine Viral Arteritis Uniform Methods and Rules, April 19, 2004. ( )

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in these rules the following terms have the following meanings: (5-3-03)

01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (5-3-03)
02. **Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)
03. **Animal.** Any vertebrate member of the animal kingdom, except man. (3-20-04)
04. **Approved Pseudorabies Vaccine.** Any pseudorabies vaccine produced under current USDA license and intended for immunizing swine against pseudorabies. (3-20-04)
05. **Cachexia.** Weakness and emaciation caused by a serious disease such as tuberculosis or cancer. (3-20-04)
06. **Department.** The Idaho State Department of Agriculture. (5-3-03)
07. **Director.** Director of the Idaho State Department of Agriculture or his designee. (9-6-61)
08. **Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)
09. **Epithelioma.** Cancer or tumor. (3-20-04)
10. **Equidae.** Horses, ponies, mules, ~~and~~ asses, and zebras. (~~3-20-04~~)( )
11. **Exposed Livestock.** Any livestock that have been in contact with an animal infected with, or affected by, any contagious, infectious or communicable disease, including all livestock in a known infected herd. (3-20-04)

12. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (3-20-04)
13. **Gamebirds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse, and guineas. (5-3-03)
14. **Garbage.** Putrescible animal and vegetable waste containing animal parts resulting from the handling, preparation, processing, cooking or consumption of foods. (3-20-04)
15. **Hatching Eggs.** Fertilized eggs. (5-3-03)
16. **Herd.** A herd is any group of livestock maintained on common ground for any purpose, or two (2) or more groups of livestock under common ownership or supervision, geographically separated, but which have an interchange or movement of animals without regard to whether the animals are infected with or exposed to contagious, infectious, or communicable animal diseases. (3-20-04)
17. **Infected Livestock.** Any livestock determined to be infected with a contagious infectious, or communicable disease by an official test or diagnostic procedure, or diagnosed by a veterinarian as infected. (3-20-04)
18. **Interstate Movement.** Movements of livestock and poultry from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. (3-20-04)
19. **Intrastate Movement.** Movement of any animal from one location to another location within Idaho. (3-20-04)
20. **Known Infected Herd.** Any herd in which any livestock has been determined to be infected with contagious, infectious, or communicable diseases by an official test or diagnostic procedure, or diagnosed by a veterinarian as being infected. (3-20-04)
21. **Livestock.** Swine, cattle, sheep, goats, equidae, domestic bison, domestic cervidae, camelids, ratites, and other domestically raised animals. (4-2-08)
22. **Necrosis.** Death of tissue. (3-20-04)
23. **Negative.** An animal that has been tested with official test procedures and is found to be negative. (3-20-04)
24. **Neoplastic Tissue.** New growth or tissue associated with a tumor. (3-20-04)
25. **Official Pseudorabies Test.** Any test for the diagnosis of pseudorabies that has been approved by USDA/APHIS and is conducted by a state/federal approved laboratory. (3-20-04)
26. **Orbital Region.** The cavity containing the eye and surrounding bones. (4-2-08)
27. **Positive.** An animal that has been tested and found positive with official disease test procedures and is considered infected with any contagious, infectious, or communicable disease. (3-20-04)
28. **Poultry.** Domesticated fowl, including chickens, turkeys, waterfowl, and gamebirds. (5-3-03)
29. **Pseudorabies.** The contagious, infectious, and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch or infectious paralysis. (3-20-04)
30. **Quarantine.** A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals

from a premise or any other location when the Administrator has determined that the animals have been found or are suspected to be exposed to or infected with any contagious, infectious, or communicable disease, or the animals are not in compliance with the provisions of this chapter. (3-20-04)

**31. Quarantined Area.** The counties, areas, or districts, portions thereof, quarantined by the Division of Animal Industries for specific contagious, infectious, or communicable animal diseases. (5-3-03)

**32. Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. (9-6-61)

**33. Ratites.** Large, non-flying birds including, but not limited to ostriches, emus, cassowaries, and rheas. (3-20-04)

**34. Registered Veterinarians.** Veterinarians registered with, and approved by, the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. (5-3-03)

**35. Restrain.** The confinement of livestock, or other animals, in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing, as approved by the Administrator. (3-20-04)

**36. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (5-3-03)

**37. Stockyards.** A facility where trading in livestock is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where livestock associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. (3-20-04)

**38. Suppuration.** The formation of pus. (3-20-04)

**39. Suspect.** An animal that has a response to an official test, but the response is not sufficient to determine the disease status of the animal tested. (3-20-04)

**40. Swine.** All breeds of domestic porcine and all wild and exotic porcine. (3-20-04)

**41. Swine Feedlot.** Premises designed and used exclusively for the finish feeding of swine, from which the swine will be moved directly to slaughter. (3-20-04)

**42. Waterfowl.** Domesticated fowl that normally swim such as ducks and geese. (5-3-03)

**43. Wildfowl.** Wild gallinaceous fowl, turkeys, and waterfowl. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. FOREIGN ANIMAL AND REPORTABLE DISEASES - EQUINE DISEASES.**

**01. African Horse Sickness.** (4-2-08)

**02. Contagious Equine Metritis.** (4-2-08)

**03. Dourine.** (4-2-08)

**04. Equine Encephalomyelitis (Eastern, Western, Venezuelan).** (4-2-08)



- |       |   |          |
|-------|---|----------|
| 05.   | Equine Infectious Anemia.                   | (4-2-08) |
| 06.   | Equine Piroplasmosis ( <i>Babesiosis</i> ). | (4-2-08) |
| 07.   | <u>Equine Viral Arteritis.</u>              | ( )      |
| 078.  | Glanders.                                   | (4-2-08) |
| 089.  | Hendra Virus.                               | (4-2-08) |
| 0910. | Japanese Encephalitis.                      | (4-2-08) |
| 101.  | Surra ( <i>Trypanosoma evansi</i> ).        | (4-2-08) |

**(BREAK IN CONTINUITY OF SECTIONS)**

**334. NOTIFIABLE DISEASES - EQUINE DISEASES.**

- |     |  |                         |
|-----|--|-------------------------|
| 01. | <del>Equine Viral Arteritis</del> <u>Equine Herpesvirus Myeloencephalopathy.</u> | <del>(4-2-08)</del> ( ) |
| 02. | Equine Rhinopneumonitis.   | (4-2-08)                |

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-0801**  
**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 25-207, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

This rule updates and clarifies the import requirements for Canadian cattle and bison imported into Idaho including individual animal identification, CAN branding and import permit requirements.

This amendment to the rule was adopted as temporary rule and was published in the January 2, 2008 edition of the Idaho Administrative Bulletin, Vol. 08-1, pages 22 and 23.

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

No fees or charges are being imposed through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted within the Idaho's cattle and bison industries.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton, Administrator / State Veterinarian 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 22, 2008.

DATED this 8th day of September, 2008.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-0801**

**201. CATTLE AND BISON IMPORTED FROM CANADA.**

All cattle and bison imported into Idaho from Canada, except those imported directly to slaughter, must: ( )

**01. CAN Brand.** Be permanently hot-iron branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip. ( )

**02. Idaho Requirements.** Meet all Idaho import requirements. ( )

**03. USDA Requirements.** Meet all USDA import requirements. ( )

**04. Individually Identified.** Be individually identified on a certificate of veterinary inspection. ( )

**05. Import Permit.** Be accompanied by an import permit issued by the Division. ( )

**202. WHEN PERMITS ARE REQUIRED FOR CATTLE.**

**01. Dairy.** For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. Dairy cattle three hundred sixty-five (365) days of age or older shall be officially identified as provided in IDAPA 02.04.20. The Administrator may require the identification of dairy cattle less than three hundred sixty-five (365) days of age. (5-3-03)

**02. Beef Bulls.** All bulls of beef breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market, except intact male calves accompanying their dams. (5-3-03)

**03. Female Beef Cattle.** All intact female cattle of beef breeds not consigned directly to an approved slaughter establishment or to a specifically approved livestock market that are: (5-3-03)

a. From states or areas that are not Brucellosis Class Free; or (5-3-03)

b. Not officially vaccinated pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis," except calves over one hundred twenty (120) days of age accompanying their dam; or (4-11-06)

c. Under one hundred twenty (120) days of age, except calves accompanying their dam. (5-3-03)

**04. Restricted Areas.** All cattle from areas or states on which Idaho or USDA has imposed restrictions. (5-3-03)

**05. Canadian Cattle and Bison.** All cattle and bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to importation. ( )

**056. Other.** Cattle of any classification that do not meet other entry requirements. (5-3-03)

**2023. -- 209. (RESERVED).**

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-0802**  
**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 25-207, 25-212, Idaho Code.

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

**WEDNESDAY - OCTOBER 15, 2008 - 7:30 pm to 8:00 pm**

**IDAHO DEPARTMENT OF AGRICULTURE**  
**2270 Old Penitentiary Road**  
**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:

Idaho's equine industry has expressed a desire for ISDA to place Equine Viral Arteritis (EVA), a viral disease of equids (horses, mules, asses) on the State Veterinarian's Reportable Disease List in order to have clear authority to prevent and control the disease. EVA causes abortions in mares and creates a carrier state in stallions. Additionally, the USDA's EVA Uniform Methods and Rules are incorporated by reference to outline biosecurity procedures for the disease. Other incorporated reference documents are updated to the latest versions. A typographical error is corrected in Section 211 and Subsection 240.05. A method of genetic purity verification is added to the options for imported domestic cervidae. Additional documents for certification of the health of imported fish are added to the fish importation requirements. A terminology correction is made in Section 800 pertaining to the USDA biologics licensing program.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Sections 67-5220, Idaho Code, informal negotiated rulemaking was conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton, 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 22, 2008.

DATED this 18th day of August, 2008.

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. 20-0421-0801**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. IDAPA 02.04.21 incorporates by reference: (4-11-06)

- 01. The October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules.** (4-11-06)
- 02. The September 30, 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules.** (4-11-06)
- 03. The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules.** (5-3-03)
- 04. The Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 146, 147, and 161, January 1, 2006~~8~~.** (~~3-30-07~~)(      )
- 05. The January 1, 2005 Edition of the Bovine Tuberculosis Eradication Uniform Methods and Rules.** (4-11-06)
- 06. The November 1, 2003 Edition of the Pseudorabies Eradication, State-Federal-Industry Program Standards.** (4-11-06)
- 07. The April 19, 2004 Edition of the Equine Viral Arteritis Uniform Methods and Rules.** (      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/Vs in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (5-3-03)
- 02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)
- 03. Animals.** All vertebrates, except humans. (5-3-03)
- 04. Approved Brucella Vaccine.** A vaccine product that is approved by and produced under license of the United States Department of Agriculture for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to brucellosis. (5-3-03)
- 05. Approved Feedlot.** A feedlot approved by the Administrator to feed female cattle and domestic bison which have not been officially vaccinated against brucellosis or other bovidae not in compliance with Idaho's rules. (5-3-03)
- 06. Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (5-3-03)
- 07. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus Brucella. (5-3-03)

- 08. Brucellosis Surveillance Area or High Risk Areas.** Any area of a state that has been identified by USDA/APHIS/VS or state animal health officials as an area that poses a greater risk for transmission of brucellosis than would be expected based upon the official classification of the state. (5-3-03)
- 09. Camelids.** Llamas, alpacas, vicunas, camels. (5-3-03)
- 10. Cattle.** All bovidae including domestic bison. (5-3-03)
- 11. Certificate.** An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official or other approved official at the point of origin of the shipment of animal(s) being imported. (5-3-03)
- 12. Department.** The Idaho State Department of Agriculture. (5-3-03)
- 13. Director.** The director of the Idaho State Department of Agriculture or his designee. (5-3-03)
- 14. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)
- 15. Domesticated.** Propagated and maintained under the control of a person. (5-3-03)
- 16. Domestic Bison.** All animals in the family Bison that are owned by a person. (5-3-03)
- 17. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 18. Equidae.** Horses, ponies, asses, mules, zebras. ( )
- 189. Exposed.** Animals that have had direct contact with other animals, herds, or materials that have been determined to be infected with or affected by any infectious, contagious, or communicable disease. (5-3-03)
- ~~190.~~ **Federal Animal Health Official.** An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (5-3-03)
- ~~201.~~ **Feeder Animals.** Animals to be fed for slaughter only. (5-3-03)
- ~~212.~~ **Game Birds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse and guineas. (5-3-03)
- ~~223.~~ **Hatching Eggs.** Fertilized eggs. (5-3-03)
- ~~234.~~ **Livestock.** Shall mean cattle, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (5-3-03)
- ~~245.~~ **Negative.** Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (5-3-03)
- ~~256.~~ **Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with the rules governing each species. (5-3-03)
- ~~267.~~ **Official Vaccinate.** Cattle or domestic bison female that was inoculated, in accordance with IDAPA 02.04.20 "Rules Governing Brucellosis" or the Brucellosis Eradication UM&R, with an approved Brucella vaccine. (5-3-03)
- ~~278.~~ **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (5-3-03)

~~289~~. **Poultry.** The term shall mean chickens, turkeys, ducks, geese, guinea fowl, pigeons, pheasants, domestic fowl, waterfowl and gamebirds. (5-3-03)

~~2930~~. **Quarantine.** A written order, executed by the Administrator, to confine or hold animals on a premise or any other location, where found, and prevent movement of animals from a premise or any other location when the administrator has determined that the animals are infected with or exposed to a disease, or are not in compliance with the provisions of this chapter. (5-3-03)

~~301~~. **Ratites.** Ostrich, emu, rhea and cassowaries. (5-3-03)

~~342~~. **Slaughter Animals.** Animals of any kind for immediate slaughter, or those consigned for slaughter within fourteen (14) days of date of shipment. (5-3-03)

~~323~~. **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)

~~334~~. **VHSV Positive Area.** Any area or region that has been identified by USDA as affected by VHSV. (4-2-08)

~~344~~. **Waterfowl.** Domestic fowl that normally swim, such as ducks and geese. (5-3-03)

~~356~~. **Wildlife.** Any animal generally living in a state of nature except, domestic bison, domestic cervidae, domestic fur bearing animals, and fish. (4-2-08)

**011. ABBREVIATIONS.**

~~01~~. **APHIS.** Animal and Plant Health Inspection Service. (4-2-08)

~~02~~. **AVIC.** Area Veterinarian in Charge. (5-3-03)

~~03~~. **AZA.** American Zoological Association. (5-3-03)

~~04~~. **CF.** Complement Fixation Test. (3-30-07)

~~05~~. **CFR.** Code of Federal Regulations. (5-3-03)

~~06~~. **CWD.** Chronic Wasting Disease. (5-3-03)

~~07~~. **EIA.** Equine Infectious Anemia. (5-3-03)

~~08~~. **EVA.** Equine Viral Arteritis. ( )

~~089~~. **NAEBA.** North American Elk Breeders Association. (5-3-03)

~~0910~~. **NPIP.** National Poultry Improvement Plan. (5-3-03)

~~101~~. **PCR.** Polymerase Chain Reaction. (4-2-08)

~~142~~. **TB.** Tuberculosis. (5-3-03)

~~123~~. **UM&R.** Uniform Methods and Rules. (5-3-03)

~~134~~. **USDA.** United States Department of Agriculture. (5-3-03)

~~145~~. **VHSV.** Viral Hemorrhagic Septicemia Virus. (4-2-08)

156. VS. Veterinary Services.

(5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. REQUIREMENTS OF TITLE 9, PARTS 71, 75, 77, 78, 85, 145, 146, 147, AND 161, CFR.**

In addition to meeting the requirements of this chapter for entry, animals imported into Idaho shall meet all applicable requirements set forth in the Title 9, Parts 71, 75, 77, 78, 85, 145, 146, 147, and 161, CFR, January 1, 2006.

~~(3-30-07)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. EQUINE VIRAL ARTERITIS.**

Intact male equidae twelve (12) months of age and older may enter Idaho when accompanied by an official interstate certificate of veterinary inspection or extended validity equine certificate from the state of origin, and one (1) of the following statements on the certificate: ( )

**01. Vaccinated for EVA.** A copy of the animal's official EVA Test and Vaccination Certificate from a USDA approved lab, signed by an accredited veterinarian, is attached to the official interstate certificate of veterinary inspection. ( )

**02. Seropositive Carrier of EVA.** The EVA test date is listed on the interstate certificate of veterinary inspection. ( )

**03. Seropositive Non-Shedder of EVA.** A copy of the stallion's negative semen EVA virus isolation test result conducted in a USDA approved lab is attached to the official interstate certificate of veterinary inspection. ( )

**04. Unknown EVA Status.** Each stallion listed on the health certificate must have the EVA status statement recorded adjacent to the stallion's name or official identification. ( )

**302. IMPORTATION OF EQUINE SEMEN.**

Equine semen may be imported into Idaho if one (1) of the following statements from the stallion's owner, agent, or veterinarian concerning the EVA status of the donor is included with the shipment: ( )

**01. Stallion is Vaccinated for EVA.** A copy of the stallion's official EVA Test and Vaccination Certificate from a USDA approved lab, signed by an accredited veterinarian, is included with the statement of EVA status for each semen shipment. ( )

**02. Stallion is EVA Carrier.** The EVA test date is listed on the statement of EVA status for each semen shipment. ( )

**03. Stallion is Seropositive Non-Shedder of EVA.** A copy of the stallion's negative semen EVA virus isolation test result conducted in a USDA approved lab is included with the statement of EVA status for each semen shipment. ( )

**04. Stallion EVA Status is Unknown.** Each shipment of equine semen must include a statement of EVA status of the donor stallion. ( )

~~3043.~~ -- 399. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**



**601. TESTING REQUIREMENTS.**

All cervidae imported into Idaho shall meet the following test requirements, except cervidae that do not originate from a CWD or Tuberculosis endemic area, as determined by the administrator, may be imported directly to an approved slaughter establishment for immediate slaughter without meeting the test requirements. (4-2-08)

**01. Brucellosis.** Animals six (6) months of age and older shall be negative to at least two (2) different official brucellosis tests, one (1) of which shall be the rivanol, or the CF, within thirty (30) days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. (3-30-07)

**02. Tuberculosis.** Imported domestic cervidae shall be tested according to the provisions in Title 9, Part 77, CFR. (5-3-03)

**03. Red Deer Genetic Factor.** Elk shall have either tested negative for red deer genetic factor by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or the Montana Department of Livestock. (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**660. CERTIFICATE AND PERMIT.**

In addition to any permits or certifications required by the Idaho Department of Fish and Game, all live fish and viable hatching eggs imported into Idaho must be accompanied by ~~a certificate of veterinary inspection issued in the state of origin and~~ an import permit issued by the Administrator; and (4-2-08)(\_\_\_\_)

**01. A Certificate of Veterinary Inspection Issued in the State of Origin; or (\_\_\_\_)**

**02. Title 50 Certification; or (\_\_\_\_)**

**03. American Fisheries Society Certified Fish Health Inspector's Certification. (\_\_\_\_)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. BIOLOGICS.**

**01. ~~Distribution Permit~~ USDA License.** Serum, vaccines, bacterins and biological remedies of all kinds used as diagnostic agents or used in the treatment of diseases of animals shall not be sold, distributed or used within the state of Idaho or imported into the state for sale, distribution or use unless such serum, vaccines, bacterins and biological remedies have been produced under a ~~permit granted~~ license issued by USDA/AHPIS/VS. (5-3-03)(\_\_\_\_)

**02. Shipping Virulent Blood or Living Virus.** All manufacturers, dealers and distributors of biological products are hereby prohibited from shipping any virulent blood or living virus or bacteria (*Brucella abortus* vaccine) of any disease affecting animals into the state of Idaho except with the written permission of the Administrator, and no living virus for use in animals or poultry shall be distributed or used within the state of Idaho unless approved by the Administrator in writing. (5-3-03)

**03. Labels.** No permit under Subsections 800.01 and 800.02 of this rule shall be issued unless the product is contained in vessels bearing labels approved by the Division of Animal Industries, properly identifying the product by proper name and description, bearing adequate directions for the use of the product, and bearing no statement, design, or device that may deceive the purchaser, or that is false or misleading in any particular. (5-3-03)

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS**  
**DOCKET NO. 02-0427-0801**  
**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 25-3902, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 7:00 pm**

**IDAHO DEPARTMENT OF AGRICULTURE**  
**2270 Old Penitentiary Road**  
**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:

The proposed rulemaking clarifies the Idaho State Department of Agriculture's criteria and requirements for the possession and importation of deleterious exotic animals in the state of Idaho. The amendments to the rules include the addition of definitions, requirements for obtaining permits, standards for construction of confinement areas, identification requirements, and record keeping requirements. The rulemaking amends the list of Deleterious Exotic Animals, contained with the rules.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2008, Idaho Administrative Bulletin, Vol. 08-6, Page 26.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton, 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 22, 2008.

DATED this 18th day of August, 2008.

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. 02-0427-0801

004. INCORPORATION BY REFERENCE.

01. ~~Incorporated Documents~~ **Code of Federal Regulations.** *This chapter incorporates the following documents by reference: Code of Federal Regulations, Title 9, Parts 1, 2, 3, 4, and 161, CFR, January 1, 2005.* (4-11-06)( )

02. **Association of Zoos and Aquariums Minimum Husbandry Guidelines for Mammals.** Issued November 14, 1997. ( )

023. **Availability of Documents.** Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions ~~shall~~ apply ~~in~~ to the interpretation and enforcement of this chapter. (3-20-04)( )

01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (3-20-04)

02. **Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture, or his designee. (3-20-04)

03. **Animal.** Any member of the animal kingdom, except man. (3-20-04)

04. **Deleterious Exotic Animal.** Any live animal, or hybrid thereof, that is not native to the state of Idaho and is determined by the Administrator to be dangerous to the environment, livestock, agriculture, or wildlife of the state. (4-11-06)

05. **Department.** The Idaho State Department of Agriculture. (3-20-04)

06. **Director.** The director of the Idaho State Department of Agriculture or his designee. (3-20-04)

07. **Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (3-20-04)

08. **Facility.** A location, including buildings, cages, corrals, pens, ponds, raceways, tanks, adjacent land, or other areas, where deleterious exotic animals are possessed. ( )

089. **Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-20-04)

0910. **Livestock.** Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and raites. (3-20-04)

101. **Operator.** The person who has authority to manage or direct a ~~premises~~ facility or other area where

animals are kept. (3-20-04)( )

**142.** **Owner.** The person who owns or has financial control of premises a facility or other areas where animals are kept. (3-20-04)( )

**123.** **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-04)

**14.** **Possess.** To confine, control, keep, have, hold, house, or own for any period of time. ( )

~~**13.** **Premises.** The ground, area, buildings, corrals, enclosures, pens, cages, ponds, raceways, tanks, and equipment utilized to keep, hold, or maintain animals. (3-20-04)~~

**15.** **State.** The state of Idaho. ( )

**146.** **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (3-20-04)

**17.** **Traveling Exhibition.** A temporary exhibition, including, but not limited to, circus, carnival, group, show, or zoo, not permanently located in the state, that possesses deleterious exotic animals. ( )

**011. ABBREVIATIONS.**

**01.** **AZA.** ~~American Association of Zoos and Aquariums Association.~~ (3-20-04)( )

**02.** **CFR.** Code of Federal Regulations. (3-20-04)

**03.** **IDFG.** Idaho Department of Fish and Game. (3-20-04)

**04.** **ISDA.** Idaho State Department of Agriculture. (3-20-04)

**05.** **ISIS.** International Species Information System. ( )

**06.** **PMP.** Population Management Plan. ( )

**07.** **SSP.** Species Survival Plan. ( )

**08.** **TAG.** Taxon Advisory Group. ( )

~~**059.** **USDA.** United States Department of Agriculture. (3-20-04)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**100. IMPORTATION OF DELETERIOUS EXOTIC ANIMALS.**~~

~~No person shall import any deleterious exotic animals into Idaho, except by permit. The Administrator may authorize, by permit, the importation of deleterious exotic animals to:~~ (3-20-04)

~~**01.** **Zoos.** Public or private zoos accredited by the AZA. (3-20-04)~~

~~**02.** **Educational Institutions.** Public or private institutions of higher education, for research purposes. (3-20-04)~~

~~**03.** **Research Facilities.** Persons conducting research determined by the Administrator to be beneficial~~

~~to agriculture, the environment, or wildlife.~~ (3-20-04)

~~**04. USDA Licensed Facilities.** Zoos and exhibitors open to the public, licensed by USDA pursuant to Title 9, Parts 1, 2, 3, and 4, CFR, and approved by the Administrator.~~ (3-20-04)

**100. POSSESSION AND PROPAGATION OF DELETERIOUS EXOTIC ANIMALS.**

**01. Possession.** No person may possess a deleterious exotic animal in the state, unless such person obtains a possession permit issued by the Administrator. ( )

**02. Propagation.** No person may propagate a deleterious exotic animal in the state without the approval of the Administrator. If the Administrator grants approval to propagate deleterious exotic animals, such approval shall be noted on the applicable possession permit. Persons seeking permission to propagate a deleterious exotic animal must meet the following requirements: ( )

**a.** Obtain, and be in full compliance with, a possession permit issued by the Administrator: ( )

**b.** Obtain, and be in full compliance with, a USDA exhibitor's license for the facility where deleterious exotic animals will be possessed; ( )

**c.** Be a member in good standing of ISIS; and ( )

**d.** Participate in a PMP or SSP administered by an AZA TAG. ( )

**e.** In the event a PMP or SSP does not exist for the deleterious exotic animal(s) a person seeks to propagate, the Administrator shall determine if the propagation of such deleterious exotic animal(s) carries a significant risk of injury to the agricultural industry, wildlife or environment of the state. The person must provide the following information to the Administrator to assist the Administrator in making that determination: ( )

**i.** The facility's capacity to hold deleterious exotic animals and any anticipated offspring; ( )

**ii.** The frequency of the proposed propagation; ( )

**iii.** The purpose(s) of the proposed propagation; and ( )

**iv.** The destination or use of the anticipated offspring. ( )

**101. POSSESSION PERMITS.**

**01. Application for Possession Permits.** Persons seeking a possession permit must make application on a form prescribed by the Administrator. A separate application must be submitted for each facility where deleterious exotic animals will be possessed. A person who receives a possession permit for deleterious exotic animals must submit a new application for each additional deleterious exotic animal that person seeks to possess. The application must include: ( )

**a.** The applicant's name, address (residence and mailing), and Employer Identification Number or Social Security Number. ( )

**b.** Description of the proposed facility, including: ( )

**i.** A map identifying the location of the proposed facility; ( )

**ii.** The geographic location (township, range, and quarter quarter section) of the proposed facility; ( )

**iii.** The legal description of the real property for the proposed facility; ( )

- iv. The approximate total area of the proposed facility: ( )
  - v. A detailed diagram of proposed facility, identifying fences, gates, confinement areas; and ( )
  - vi. The specifications of the confinement areas for all deleterious exotic animals listed on the application, identifying exterior fencing, interior fencing, fence height, fencing materials, size of confinement areas, etc. ( )
  - c. Name and address of the owner(s) of the proposed facility, if not the applicant. If the proposed facility will be leased, include a written and notarized statement by the owner of the property authorizing the use of the proposed facility to house deleterious exotic animals. ( )
  - d. Name and address of the operator(s) of the proposed facility, if not the applicant. ( )
  - e. Copy of approval by the local zoning authority, if approval is required by the local zoning authority. ( )
  - f. Description of each deleterious exotic animal to be possessed at the facility, including genus, species, sex, age, identification, and purpose for possessing each deleterious exotic animal. ( )
  - g. Name and address of the owner of each deleterious exotic animal listed on the application. ( )
  - h. Name and address of the licensed Idaho veterinarian who will provide care for the deleterious exotic animal(s) listed on the application. ( )
  - i. Written statement detailing the applicant's training and experience with the species listed on the application. ( )
  - j. Written statement detailing the procedure in the event a deleterious exotic animal escapes from the facility. ( )
  - k. Documentation of licenses issued by the USDA, if applicable. ( )
  - l. Documentation of licenses issued by the U.S. Fish and Wildlife Service, if applicable. ( )
  - m. Documentation of accreditation by the AZA, if applicable. ( )
  - n. Documentation of membership in ISIS, if applicable. ( )
  - o. Documentation of approved participation in a PMP or SSP administered by an AZA TAG, if applicable. ( )
  - p. The required information set forth Paragraph 100.02.e., of these rules, if applicable. ( )
  - q. For each deleterious exotic animal listed on the application, proof of sterilization or use of a method of birth control administered by a licensed veterinarian and approved by the Administrator, unless the applicant intends to propagate the deleterious exotic animal and fully satisfies the requirements of Subsection 100.02, of these rules. ( )
  - r. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the exotic animals are possessed at the proposed facility. ( )
- 02. Application Process.** The Administrator shall consider all information in the application for a possession permit and issue a written decision granting or denying the application. ( )
- 03. Application Review.** The Administrator shall review the possession permit application and, in

determining whether to issue the possession permit, shall consider factors relating to protection of the state's agriculture industry, the wildlife of the state, and the environment. Such factors include, but are not limited to: ( )

**a.** Proximity of the facility to farms, ranches, wildlife migration routes, and other areas in which native Idaho wildlife may commonly be found. ( )

**b.** Potential for unintended or accidental access to the facility. ( )

**c.** Potential for vandalism that compromises the security of the facility. ( )

**d.** Potential for escape from the facility. ( )

**e.** The size of the facility relative to the number of animals proposed to be kept at the facility. ( )

**f.** Whether, based on the applicant's certification and any other evidence received by the Administrator in connection with the proposed facility, all federal, state, county and city laws applicable to the facility have been met. ( )

**g.** Whether the applicant has adequate knowledge, experience and training to maintain the health, welfare and safety of the deleterious exotic animal(s), to handle the deleterious exotic animal(s) with safety and competence, and to ensure that the deleterious exotic animal(s) will not harm the state's agriculture, wildlife or the environment. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ( )

**h.** Whether the facility is adequately designed, constructed, and shall be managed to protect agriculture, wildlife and the environment from escape of the confined animal(s), including those instances when the applicant is not present at the facility. ( )

**i.** Prior to issuing a possession permit, the Administrator or designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ( )

**04. Grant or Denial of the Permit.** Following review of the application and any other relevant information, the Administrator shall either issue the possession permit or deny the application and notify the applicant. If the Department issues the permit, it may include any conditions intended to ensure the health, welfare and safety of the animal(s) covered by the permit and, where the Department finds it necessary, conditions intended to assure the security of the facility so as to avoid undue risk to the state's agriculture, wildlife and the environment. ( )

**05. Duration of Possession Permit.** A possession permit shall exist and be valid for the life of the deleterious exotic animal listed on a possession permit, until the permitted person no longer possess the deleterious exotic animal, or until the deleterious exotic animal leaves the state. ( )

~~**10.2. CIRCUSES AND TRAVELING EXHIBITIONS TEMPORARY EXHIBITOR PERMITS.**~~  
~~*The Administrator may authorize, by permit, the importation and possession of deleterious exotic animals by circuses and other traveling exhibitions licensed by USDA. A traveling exhibition may not possess any deleterious exotic animal in the state unless the traveling exhibition obtains a temporary exhibitor permit issued by the Administrator.*~~  
~~(3-20-04)~~( )

**01. Application for Temporary Exhibitor Permits.** Persons seeking a temporary exhibitor permit must make application on a form prescribed by the Administrator. The application must include: ( )

**a.** The applicant's name, address (business and mailing) and Employer Identification Number or Social Security Number. ( )

**b.** The name and address of the owner(s) and operator(s) of the temporary exhibition, if not the applicant. ( )

- c. Description of the cages or other housing in which the deleterious exotic animal(s) will be kept in the state. ( )
- d. The physical address of each location(s) at which the deleterious exotic animal(s) will remain while in the state. ( )
- e. A map identifying the location(s) at which the deleterious exotic animal(s) will be kept. ( )
- f. Name and address of the owner(s) of the location(s) at which the deleterious exotic animal(s) will be kept. ( )
- g. Written statement detailing the procedure(s) in the event a deleterious exotic animal escapes from the temporary exhibit. ( )
- h. Documentation of licenses issued by the USDA, if applicable. ( )

**042.** **Period of Validity.** ~~Import~~ Temporary exhibitor permits, issued pursuant to Section 101, shall be are valid for no more than ~~fourteen~~ thirty (~~14~~30) days after the date of issuance of the permit. (~~3-20-04~~)( )

**023.** **Removal.** All deleterious exotic animals ~~imported pursuant to Section 101, shall~~ subject to a temporary exhibitor permit must be removed from Idaho prior to the expiration of the import permit. (~~3-20-04~~)( )

~~03.~~ **Time Extension.** ~~The Administrator may extend the time limits in Section 101 of this rule on a case-by-case basis.~~ (~~3-20-04~~)

**103-- 109. (RESERVED).**

~~102~~**110. IMPORT PERMIT AND CERTIFICATE OF VETERINARY INSPECTION IMPORTATION OF DELETERIOUS EXOTIC ANIMALS.**

~~All~~ No person may import any deleterious exotic animals ~~imported pursuant to Sections 100 or 101 of this rule shall be~~ into the state unless the deleterious exotic animal is accompanied in transit by an import permit issued by the Administrator, any permits required by the Idaho Department of Fish and Game, and an official certificate of veterinary inspection. (~~3-20-04~~)( )

**111. IMPORT PERMITS.**

The Administrator shall issue import permits in accordance with IDAPA 02.04.21, "Rules Governing the Importation of Animals." ( )

**01. Application for Import Permits.** In addition to the requirements set forth in IDAPA 02.04.21.104, persons seeking import permits must submit the following: ( )

- a. An application on a form prescribed by the Administrator; ( )
- b. A valid possession permit or temporary exhibitor permit issued by the Administrator; and ( )
- c. A certificate of veterinary inspection that meets the requirements in Section 112, of these rules. ( )

**02. Period of Validity.** Import permits are valid for fifteen (15) days from the date of issuance of the permit, unless stated otherwise on the permit. ( )

~~103~~**112. CONTENTS OF CERTIFICATES OF VETERINARY INSPECTION.**

All deleterious exotic animals imported into the state must be accompanied in transit by an official certificate of veterinary inspection. All certificates ~~shall~~ must be written, legible, and attest that the animal(s) meet the importation requirements of the state, ~~of Idaho~~ set forth in IDAPA 02.04.21, "Rules Governing the Importation of Animals." The certificate ~~shall~~ must be on an official form of the state of origin, be approved by its livestock sanitary official, and be



issued by an accredited veterinarian. An equivalent form of the USDA issued by a federal animal health official is acceptable in lieu of a certificate of veterinary inspection. *All certificates shall contain the following information:*  
(3-20-04)(\_\_\_\_)

**01. Required Information.** All certificates of veterinary inspection must contain the following information: (\_\_\_\_)

~~01a. Name and Address.~~ Name and address of the consignor and consignee; and (3-20-04)(\_\_\_\_)

~~02b.~~ Origin of shipment, including city and state; and (3-20-04)(\_\_\_\_)

~~03c. Final Destination.~~ Final destination of shipment in Idaho, including city; and (3-20-04)(\_\_\_\_)

~~04d. Description of Animals.~~ An accurate description and identification of each animal; and (3-20-04)(\_\_\_\_)

~~05e. Purpose of Shipment.~~ The purposes for which the animals were shipped; and (3-20-04)(\_\_\_\_)

~~06f.~~ Method of transportation; and (3-20-04)(\_\_\_\_)

~~07g. Health Status.~~ The certificate shall indicate the health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state of Idaho; and (3-20-04)(\_\_\_\_)

~~08h. Signature.~~ The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (3-20-04)(\_\_\_\_)

**092. Submission of Certificate.** The required copies of certificates of veterinary inspection or other approved certificates shall must be submitted, within thirty (30) days of inspection, to the Division. (3-20-04)(\_\_\_\_)

**103. Period of Certificate Validity.** Certificates of veterinary inspection shall be are valid for no longer more than thirty (30) days after the date of inspection. (3-20-04)(\_\_\_\_)

**10413-- 1019. (RESERVED).**

**~~110. DECLARATION OF EXISTING DELETERIOUS EXOTIC ANIMALS.~~**

~~Any person that possesses deleterious exotic animals shall declare those animals to the Administrator, in writing, on a form provided by the Division of Animal Industries prior to June 30, 2004. The declaration form shall be filled out accurately, legibly, and completely.~~ (3-20-04)

**~~111. POSSESSION PERMIT REQUIRED.~~**

~~Effective July 1, 2004, no person shall possess a deleterious exotic animal without a possession permit signed by the Administrator.~~ (3-20-04)

~~01. Existing Deleterious Animals.~~ The Administrator may authorize possession permits for existing deleterious exotic animals on a case-by-case basis. (3-20-04)

~~02. Permit Applications.~~ Possession permit applications shall be on a form prescribed by the Administrator and obtained from the Division of Animal Industries. (3-20-04)

~~03. Deadline for Application.~~ Possession permit applications for existing deleterious exotic animals shall be received by the Administrator prior to June 30, 2004. (3-20-04)

~~04. Exceptions.~~ The Administrator may grant exceptions to the requirements of Section 111, or extensions of the time limits set in Section 111, on a case-by-case basis. (3-20-04)

**1120. DISPOSITION OF NON-PERMITTED DELETERIOUS EXOTIC ANIMALS.**

The Administrator may order non-permitted or illegally possessed or imported deleterious exotic animals to be removed from the state, moved to premises facilities that are in compliance with this chapter, or destroyed.

(3-30-07)(\_\_\_\_)

~~113. -- 119.~~ (RESERVED).

~~120. IDENTIFICATION OF DELETERIOUS EXOTIC ANIMALS.~~

~~All deleterious exotic animals in Idaho shall be officially identified with permanent types of identification, approved by the Administrator.~~

(3-20-04)

~~121. -- 149.~~ (RESERVED).

~~150. PROPAGATION OF DELETERIOUS EXOTIC ANIMALS.~~

~~No person shall propagate any deleterious exotic animals in Idaho. The Administrator may authorize, by permit, the following entities to propagate deleterious exotic animals:~~

(3-20-04)

~~01. Zoos. Public or private zoos accredited by the AZA.~~ (3-20-04)

~~02. Educational Institutions. Public or private institutions of higher education, for research purposes.~~ (3-20-04)

~~03. Research Facilities. Persons conducting research determined by the Administrator to be beneficial to agriculture, the environment, or wildlife.~~ (3-20-04)

~~04. USDA Licensed Facilities. Zoos and exhibitors, open to the public, licensed by USDA pursuant to Title 9, Parts 1, 2, 3, and 4, CFR, and approved by the Administrator.~~ (3-20-04)

~~05. Existing Operations. Persons that have declared under Section 110 and that possess deleterious exotic animals under Section 111 may be permitted to propagate deleterious exotic animals on a case-by-case basis.~~ (3-20-04)

121. TRANSFER OF DELETERIOUS EXOTIC ANIMALS.

No person may transfer, sell, barter, trade, change ownership, or change possession of any deleterious exotic animal, unless the person receiving the deleterious exotic animal has obtained a possession permit, issued by the Administrator, for the animal being transferred. (\_\_\_\_)

122. RELEASE OF DELETERIOUS EXOTIC ANIMALS.

No person may release any deleterious exotic animal within the state. (\_\_\_\_)

~~151~~123. REVOCATION OF PERMITS.

Permits issued pursuant to this chapter may be revoked at any time if the Administrator finds violations of any of the provisions of this chapter. (4-11-06)

~~152~~124. -- 199. (RESERVED).

**200. CONFINEMENT OF DELETERIOUS EXOTIC ANIMALS.**

All deleterious exotic animals ~~shall~~ must be confined in appropriate facilities, as determined by the Administrator. These facilities shall be constructed and maintained to: (3-20-04)(\_\_\_\_)

**01. Prevent Escape.** Prevent the escape of deleterious exotic animals for any length of time. (3-20-04)(\_\_\_\_)

**02. Prevent Ingress of Wildlife.** Prevent the ingress of free ranging wildlife that could be negatively impacted by the confined deleterious exotic animals. (3-20-04)

**03. Assure Animal Care.** Assure the appropriate level of animal care, including maintaining the facilities in a sanitary condition. (4-11-06)

~~04. Escapes. The escape of any deleterious exotic animal shall be reported to the Administrator within twenty-four (24) hours of the discovery of the escape. (4-11-06)~~

**201. CONSTRUCTION STANDARDS FOR CONFINEMENT AREAS.**

Confinement areas for deleterious exotic must be constructed according to the following construction standards, depending on the species of the deleterious exotic animal: ( )

**01. Birds.** Confinement areas for birds on the list of deleterious exotic animal set forth in Section 401 of these Rules must be constructed to prevent egress and provide adequate space for the birds. Confinement areas must include a cover sufficient to prevent egress or escape of the species of birds contained therein. ( )

**02. Mammals.** Confinement areas for mammals on the list of deleterious exotic animal in Sections 402-413 of these Rules must comply with the construction standards in the AZA Minimum Husbandry Guidelines for Mammals. ( )

**202. ESCAPE OF DELETERIOUS EXOTIC ANIMALS.**

Persons possessing deleterious exotic animals must report the escape of any deleterious exotic animal to the Administrator within twenty-four (24) hours of the discovery of the escape. ( )

**203. IDENTIFICATION OF DELETERIOUS EXOTIC ANIMALS.**

All deleterious exotic animals must be identified with an unique identification according to the following standards, depending on the species of the deleterious exotic animal: ( )

**01. Birds.** Birds must be identified with a microchip and a leg band. ( )

**02. Mammals.** Mammals must be identified with a microchip and a tattoo. ( )

~~204. -- 299. (RESERVED).~~

~~**300. DISPOSITION OF DELETERIOUS EXOTIC ANIMALS WITHIN IDAHO.**~~

~~No person shall sell, barter, trade, change ownership, or release into the wild within Idaho, any deleterious exotic animal except: (3-20-04)~~

~~**01. To Permitted Facilities.** Deleterious exotic animals may be sold, bartered, traded, or given to a zoo, educational institution, USDA licensed facility, or research facility that has a possession permit pursuant to Section III. (3-20-04)~~

~~**02. Between Permitted Facilities.** Zoos, educational institutions, USDA licensed facilities, or research facilities that have a possession permit, pursuant to Section III of this rule, may sell, trade, barter, or exchange deleterious exotic animals with other zoos, educational institutions, USDA licensed facilities, or research facilities that have possession permits pursuant to Section III. (3-20-04)~~

~~**03. Records.** All persons who sell, barter, trade, change ownership or possession of deleterious exotic animals shall keep complete and accurate records of the disposition of any deleterious exotic animals, including the new contact information for persons in possession of the deleterious exotic animal and date of disposition. Such records shall be maintained for a minimum of three (3) years and shall be presented to the Administrator upon request. (4-11-06)~~

**300. RECORDKEEPING.**

**01. Annual Inventory.** Any person that possesses deleterious exotic animals must submit a complete and accurate annual inventory of such animals to the Administrator on or before the first day of July each year. The annual inventory must include the following information: ( )

**a.** Identify each deleterious exotic animal by genus, species, sex, and identification. ( )

**b.** Identify each deleterious exotic animal born during the last reporting year, including the genus, species, sex, identification, and date of birth. ( )

**c.** Identify each deleterious exotic animal that was transferred to another person, including the genus, species, sex, identification, date of transfer, and name and address of the person to whom the deleterious exotic animals was transferred. ( )

**d.** Identify each deleterious exotic animal that died during the last reporting year, including the genus, species, sex, identification, date of death, and cause of death. ( )

**02. Records of Transfers.** All persons who transfer, sell, barter, trade, change ownership, or change possession of deleterious exotic animals must keep complete and accurate records of the disposition of any deleterious exotic animals, including the new contact information for persons in possession of the deleterious exotic animal and date of disposition. Such records must be maintained for a minimum of three (3) years and must be presented to the Administrator upon request. ( )

**301. EXPORT OF DELETERIOUS EXOTIC ANIMALS:**  
*Any deleterious exotic animals exported from Idaho shall meet all applicable federal regulations for the interstate movement of animals.* (3-20-04)

**302. ANNUAL INVENTORY:**  
*Any person that possesses deleterious exotic animals shall submit a complete and accurate inventory of such animals to the Administrator on or before the first day of July each year. Each inventory shall clearly show the disposition of all deleterious exotic animals including, but not limited to:* (4-11-06)

**01. Date and Cause of Death.** *The date and cause of death of any deleterious exotic animals.* (4-11-06)

**02. New Owner Information.** *The name and address of any person to whom deleterious exotic animals were transferred.* (4-11-06)

~~303~~301. -- 309. (RESERVED).

**310. DEAD ANIMALS MOVEMENT AND DISPOSAL.**  
All deleterious exotic animals that die, or are euthanized, *shall must* be disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal" and the death *shall must* be reported to the Administrator within five (5) business days of the discovery of the death. (4-11-06)( )

311. -- 399. (RESERVED).

**400. DELETERIOUS EXOTIC ANIMALS — INVERTEBRATES.**

**01. Zebra Mussel (*Dreissenia polymorpha*).** (3-20-04)

**02. New Zealand Mud Snail (*Potamopyrgus antipodarum*).** (3-20-04)

**03. Red Claw Crayfish (*Cherax quadricarinatus*).** (4-11-06)

**04. Yabby Crayfish (*Cherax albidus/C. destructor*).** (4-11-06)

**05. Marone Crayfish (*Cherax tenuimanus*).** (4-11-06)

**400. LIST OF DELETERIOUS EXOTIC ANIMALS.**  
The Administrator may add or remove animal species to the list of deleterious exotic animals in this chapter by issuing a written order listing animals and the reasons for adding them to or removing them from the list deleterious exotic animals. ( )

~~401. — 499.~~ (RESERVED).

~~500. DELETERIOUS EXOTIC ANIMALS -- FISH.~~

- ~~01. Green Sturgeon (*Acipenser medirostris*). (3-20-04)~~
- ~~02. Walking Catfish (*Claridae*). (3-20-04)~~
- ~~03. Bowfin (*Ania Calva*). (3-20-04)~~
- ~~04. Gar (*Lepiostidae*). (3-20-04)~~
- ~~05. Piranhas (*Serrasalmus spp.*, *Rosseveltiella spp.*, *Pygocentrus spp.*). (3-20-04)~~
- ~~06. Rudd (*Scardinius erythrophthalmus*). (3-20-04)~~
- ~~07. Ide (*Leuciscus idus*). (3-20-04)~~
- ~~08. Grass Carp (*Ctenopharyngoden idella*). Diploid grass carp. (3-20-04)~~
- ~~09. Bighead Carp (*Hypophthalmichthys nobilis*). (3-20-04)~~
- ~~10. Silver Carp (*Hypophthalmichthys molitrix*). (3-20-04)~~
- ~~11. Black Carp (*Mylopharyngodeon piceus*). (3-20-04)~~
- ~~12. Snakeheads (*Channa spp.*, *Parachanna spp.*). (3-20-04)~~

~~501.---599. (RESERVED).~~

~~600. DELETERIOUS EXOTIC ANIMALS -- AMPHIBIANS.~~

~~601.---649. (RESERVED).~~

~~650. DELETERIOUS EXOTIC ANIMALS -- REPTILES.~~

~~651.---699. (RESERVED).~~

~~700~~401. DELETERIOUS EXOTIC ANIMALS -- BIRDS.

- 01. Mute Swan (*Cygnus olor*). Mute swans except those that have been pinioned. (3-20-04)

~~701.---799. (RESERVED).~~

~~800~~402. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- CANIDAE.

All non-native canidae species. (4-11-06)

~~800~~403. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- CERVIDAE.

- 01. Red Deer (*Cervus elaphus elaphus*). (3-20-04)
- 02. Sika Deer (*Cervus nippon*). (3-20-04)

~~807~~404. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- FELIDAE.

- ~~07~~1. Caracal (*Felis caracal*). (4-11-06)
- ~~05~~2. Cheetah (*Acinonyx jubatus*). (4-11-06)

- ~~403.~~ Geoffroy's Cat (*Felis geoffroyi*). (4-11-06)
04. Jaguar (*Panthera onca*). (4-11-06)
- ~~035.~~ Leopard (*Panthera pardus*). All leopards. (4-11-06)
- ~~046.~~ Lion (*Panthera leo*). (4-11-06)
- ~~097.~~ Margay (*Felis wiedii*). (4-11-06)
08. Ocelot (*Felis pardalis*). (4-11-06)
- ~~069.~~ Serval (*Felis serval*). (4-11-06)
- ~~0210.~~ Tiger (*Panthera tigris*). All tigers. (4-11-06)
- ~~805405.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- INSECTIVORES.
01. European Hedgehog (*Erinaceus europeaus*). (4-11-06)
- ~~804406.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- MARSUPIALS.
01. Brush Tailed Possum (*Trichsurus vulpecula*). (4-11-06)
- ~~819407.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- NON-HUMAN PRIMATES.  
All non-human primates. (4-11-06)
- ~~801408.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- OVIDAE.
01. Barbary Sheep (*Ammotragus lervia*). (4-11-06)
02. Mouflon Sheep (*Ovis musimon*). (4-11-06)
- ~~809409.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- PROCYONIDAE.
- ~~021.~~ Coatimundi. (4-11-06)
- ~~042.~~ Kinkajou. (4-11-06)
- ~~806410.~~ DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- RODENTIA.
- ~~051.~~ African Dormice (*Graphiurus*). (4-11-06)
- ~~042.~~ African Rope Squirrels (*Funisciurus*). (4-11-06)
- ~~083.~~ African Striped Mice (*Hybomys*). (4-11-06)
- ~~034.~~ African Tree Squirrels (*Heliosciurus*). (4-11-06)
- ~~075.~~ Brush-tailed Porcupines (*Atherurus*). (4-11-06)
- ~~406.~~ Capybara (*Hydrochoerus hydrochaeris*). (4-11-06)
- ~~067.~~ Gambian Giant Pouched Rats (*Cricetomys*). (4-11-06)
- ~~028.~~ Prairie Dogs (*Cynomys*). (4-11-06)

~~049.~~ **South American Rodents.** All South American rodents except guinea pigs and chinchillas. (4-11-06)

~~a.~~ *Nutria (Myocastor coypus).* (~~4-11-06~~)

~~803411.~~ **DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- SUIDAE.**

**01.** **European or Russian Wild Boar (*Sus scrofa*).** (4-11-06)

~~802412.~~ **DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- TAYASSUIDAE**

**01.** **Peccary (*Dicotyles tajacu*).** (4-11-06)

~~811413.~~ -- ~~8499.~~ **(RESERVED).**

~~900.~~ **ADDITION OF ANIMALS.**

~~The Administrator may add or remove animal species to the deleterious exotic animals list in this chapter by issuing a written order listing animals and the reasons for adding them to or removing them from the deleterious exotic animals list.~~ (~~3-30-07~~)

~~901. -- 989.~~ **(RESERVED).**

~~990500.~~ **PENALTIES FOR VIOLATIONS.**

Any person who violates the provisions of this chapter shall be subject to the penalty provisions of Section 25-3905, Idaho Code. (3-20-04)

~~991. -- 998.~~ **(RESERVED).**

~~999501.~~ **MINOR VIOLATIONS.**

Nothing in this chapter shall be construed as requiring ISDA to report minor violations when ISDA believes that the public interest will be best served by suitable warnings or other administrative action. (3-20-04)

~~502. -- 999.~~ **(RESERVED).**

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**

**02.06.09 - INVASIVE SPECIES RULES**

**DOCKET NO. 02-0609-0801 (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 22-1907, 22-2006 and 22-2015, Idaho Code.

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

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**TUESDAY - OCTOBER 14, 2008 - 6:00 pm to 8:00 pm**

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**SANDPOINT COMMUNITY CENTER  
204 S. First Avenue  
Sandpoint, ID**

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

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

The rule determines which species are invasive in Idaho and establishes procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Volume 08-07, page 19.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Amy Ferriter, Invasive Species Coordinator (208) 332-8686 or Thomas E. Dayley, Administrator (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 25th day of August, 2008.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701-0790  
Phone 332-8500, Fax 334-2170

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0609-0801**



**IDAPA 02**  
**TITLE 06**  
**CHAPTER 09**

**02.06.09 - INVASIVE SPECIES RULES**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 19, Idaho Code, the “Idaho Invasive Species Act of 2008” and Title 22, Chapter 20, Idaho Code, the “Idaho Plant Pest Act of 2002.” ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.09, “Invasive Species Rules.” ( )

**02. Scope.** These rules govern the designation of invasive species, and establish procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping of regulated species. The official citation of this chapter is IDAPA 02.06.09, et seq. For example, the citation for this section is IDAPA 02.06.09.001. ( )

**002. WRITTEN INTERPRETATIONS.**

As described in Section 67-5201(19) (b) (iv), Idaho Code, the Idaho State Department of Agriculture may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeal before the Idaho State Department of Agriculture under this chapter. Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. However, other species of plants or animals harmful to Idaho agriculture or the environment, and not listed herein as an invasive species, may be regulated by other administrative rules. Please contact the Department for additional information. ( )

**005. ADDRESS, OFFICE HOURS, 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. ( )

**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. ( )

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

**04. Telephone Number.** The telephone number for the Division of Plant Industries at the central office is (208) 332-8620. ( )

**05. Fax Number.** The fax number for the Division of Plant Industries at the central office is (208) 334-2283. ( )

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the Department and the State Law Library.

( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

The Department adopts the definitions set forth in Section 22-1904, Idaho Code. In addition, the following definitions shall apply in the interpretation and enforcement of this rule.

( )

**01. Control.** The abatement, suppression, containment or eradication of an invasive species. ( )

**02. Department.** The Idaho State Department of Agriculture. ( )

**03. Director.** The director of the Idaho State Department of Agriculture or the director's designee. ( )

**04. Decontaminate.** To decontaminate means to control an invasive species on a conveyance or equipment in accordance with rule or accepted practices and/or label requirements. ( )

**05. Environmental Harm.** To cause significant adverse effects on uses of natural resources or on plants or animals. ( )

**06. Equipment.** An article, tool, implement, or device capable of carrying or containing an invasive species. ( )

**07. Infested.** A plant, animal, geographic region, water body, facility or water supply system that: ( )

**a.** Has been determined by the Department to contain an invasive species; ( )

**b.** Has been so exposed to an invasive species and that invasive species can reasonably be expected to persist. ( )

**08. Invasive Species Act.** The Idaho Invasive Species Act of 2008. ( )

**09. Plant Pest Act.** The Idaho Plant Pest Act of 2002. ( )

**10. State.** The State of Idaho. ( )

**11. Water Body.** Natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain. Tanks open to the air are included in this definition of water body. Tanks that are sealed, e.g. chemigation equipment and drinking water system storage tanks, are not water bodies for the purpose of this rule. ( )

**12. Water Supply System.** A system used to treat, convey or distribute water for irrigation, industrial, waste water treatment or culinary use. A water supply system includes a pump, canal, ditch, or pipeline, but does not include a water body as defined in Section 010.11. ( )

**011. ABBREVIATIONS.**

**01. IDFG.** Idaho Department of Fish & Game. ( )

**012. -- 099. (RESERVED).**

**100. PROHIBITION ON POSSESSION, IMPORTATION, SHIPPING, AND TRANSPORTATION.**

**01. Prohibited Acts.** No person shall undertake or commit any of the prohibited acts listed below following the effective date of this rule, unless the act falls within one (1) of the exceptions set forth in Section 100.02. Prohibited acts include but are not limited to: ( )

- a.** Possession, propagation, importation, export, shipping, and transportation of an invasive species; ( )
- b.** Release, placement, planting, or causing to be released, placed, or planted an invasive species in a water body, facility, water supply system, field, garden, planted area, ecosystem, or otherwise into the environment; ( )
- c.** Transportation of a conveyance or equipment that has been in an infested water within the previous thirty (30) days without decontaminating the conveyance or equipment; or ( )
- d.** Transportation, importation or shipping of any plant, animal, mode of transportation, conveyance, or any thing or object that is infested with an invasive species without decontaminating the object. ( )

**02. Exceptions.** The Director may authorize, by permit, the possession, importation, shipping, and/or transportation of an invasive species into or through the state of Idaho only if: ( )

- a.** The invasive species is being transported to the Department or IDFG, or such other destination as the Director may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species; or ( )
- b.** The species is being transported for disposal as part of a control activity, in accordance with a permit issued pursuant to Section 22-1906, Idaho Code; or ( )
- c.** The invasive species specimen has been lawfully acquired and is dead, and in the case of plant species, all seed has been removed and the plant rendered otherwise nonviable; or ( )
- d.** The invasive species is in the form of herbaria or has otherwise been preserved, and rendered nonviable. ( )

**110. PERMITS.**

**01. Research Permit.** The Director may issue a research permit to any division of federal, state or local government, a college or university, or other research facility, upon receipt of an application on forms provided by the Department. In order to obtain a research permit, the person seeking that permit shall prove, to the Director's satisfaction, that: ( )

- a.** Any person capturing, harvesting or otherwise acquiring an invasive species under the permit shall utilize capturing, harvesting or acquisition practices that will ensure that the invasive species is not spread or disseminated as a result of the capture, harvest or acquisition; ( )
- b.** Any person who comes into contact with an invasive species will decontaminate any equipment as soon as possible after leaving infested waters or the area in which the invasive species was found; and ( )
- c.** Any invasive species will be rendered nonviable prior to disposal. ( )

**02. Cooperative Agreements.** Nothing contained in Section 110 shall prevent the Director from entering into memoranda of agreement, cooperative agreements or other agreements with other governmental entities to address the possession, transportation, shipping, decontamination or capture of an invasive species. ( )

**111. -- 119. (RESERVED).**

**120. DECLARATION OF EXISTING INVASIVE SPECIES.**

**01. Declaration.** Any person possessing an invasive species listed herein prior to the effective date of this rule shall declare those species to the director, in writing, on a form provided by the Division of Plant Industries prior to one hundred and twenty (120) days after the effective date of these Rules. The declaration form shall be completed accurately, legibly, and completely. ( )

**02. No Propagation.** No person who possesses an invasive species prior to the effective date of this rule shall undertake or allow propagation or spread of that species. ( )

**121. -- 299. (RESERVED).**

**300. REPORTING REQUIREMENTS.**

**01. Reporting Invasive Species.** Any person who discovers an invasive species within the State or who has reason to believe that an invasive species may exist at a specific location shall immediately report the discovery to the Department. ( )

**02. Report Information.** The report shall, to the best of the reporter's ability, contain the following information: ( )

**a.** Location of the invasive species; ( )

**b.** Date of discovery; and ( )

**c.** Identification of any conveyance, equipment, water body, or host in or upon which the invasive species may be found. ( )

**03. Reporting Method.** The report shall be made in person or in writing (which shall include electronic mail) at any Department office or headquarters. ( )

**301. -- 399. (RESERVED).**

**400. INVASIVE SPECIES -- INVERTEBRATES (NOT INCLUDING SNAILS AND SLUGS).**

**01. Dreissena Mussels, *Dreissena spp.*** ( )

**02. New Zealand Mud Snail, *Potamopyrgus antipodarum.*** ( )

**03. Red Claw Crayfish, *Cherax quadricarinatus.*** ( )

**04. Yabby Crayfish, *Cherax albidus/C. destructor.*** ( )

**05. Marone Crayfish, *Cherax tenuimanus.*** ( )

**06. Rusty Crayfish, *Orconectes rusticus.*** ( )

**07. Asian Clam, *Corbicula fluminea.*** ( )

**401. INVASIVE SPECIES -- FISH.**

**01. Green Sturgeon, *Acipenser medirostris.*** ( )

**02. Walking Catfish, *Clariidae batrachus.*** ( )

**03. Bowfin, *Ania calva.*** ( )

**04. Gar, *Lepiostidae.*** ( )

05. Piranhas, *Serrasalmus spp.*, *Rosseveltiella spp.*, *Pygocentrus spp.* ( )
06. Rudd, *Scardinius erythrophthalmus.* ( )
07. Ide, *Leuciscus idus.* ( )
08. Diploid Grass Carp, *Ctenopharyngoden idella.* ( )
09. Bighead Carp, *Hypophthalmichthys nobilis.* ( )
10. Silver Carp, *Hypophthalmichthys molitrix.* ( )
11. Black Carp, *Mylopharyngodeon piceus.* ( )
12. Snakeheads, *Channa spp.*, *Parachanna spp.* ( )
13. Round Goby, *Neogobius melanostomas.* ( )
14. Ruffe, *Gymnocephalus cernuus.* ( )
402. INVASIVE SPECIES -- AMPHIBIANS.
01. Rough-Skinned Newt, *Taricha granulose.* ( )
02. Bullfrog, *Lithobates catesbeianus.* ( )
403. INVASIVE SPECIES -- REPTILES.
01. Red-Eared Slider, *Trachemys scripta elegans.* ( )
02. Mediterranean Gecko, *Hemidactylus turcicus.* ( )
03. Common Wall Lizard, *Podarcis muralis.* ( )
04. Italian Wall Lizard, *Podarcis sicula.* ( )
05. Brahminy Blindsnake, *Ramphotyphlops braminus.* ( )
404. INVASIVE SPECIES -- BIRDS.
01. Monk Parakeet, *Myiopsitta monachus.* ( )
405. INVASIVE SPECIES -- MAMMALS.
01. Nutria, *Myocastor coypus.* ( )
406. INVASIVE SPECIES -- INSECTS.
01. Asian Longhorned Beetle, *Anoplophora glabripennis.* ( )
02. Citrus Longhorned Beetle, *Anoplophora chinensis.* ( )
03. Emerald Ash Borer, *Agrilus planipennis.* ( )
04. Marmorated Stink Bug, *Halyomorpha halys.* ( )
05. European Woodwasp, *Sirex noctilio.* ( )

06. European Gypsy Moth, *Lymantria dispar*. ( )
07. Asian Gypsy Moth, *Lymantria dispar*. ( )
08. Soybean Aphid, *Aphis glycines*. ( )
09. Potato Tuber Moth, *Tecia solanivora*. ( )
10. Japanese Beetle, *Popilla japonica*. ( )
11. Mexican Bean Beetle, *Epilachna varivestis*. ( )
12. Kaphra Beetle, *Trogoderma granarium*. ( )
13. Red Imported Fire Ant, *Solenopsis invicta*. ( )
14. Glassy-Winged Sharpshooter, *Homalodisca coagulate*. ( )
15. Grape Phylloxera, *Daktulosphaira vitifoliae*. ( )
16. Vine Mealybug, *Planococcus ficus*. ( )
17. Summer Fruit Tortix, *Adoxophyes orana*. ( )
18. Silver Y Moth, *Autoographa gamma*. ( )
19. False Codling Moth, *Cyrtophlebia leucotreta*. ( )
20. Light Brown Apple Moth, *Epiphyas postvittana*. ( )
21. Apple Tortrix, *Archips fuscocupreanus*. ( )
22. Pine Shoot Beetle, *Tomicus piniperda*. ( )
23. Cherry Bark Tortrix, *Enarmonia formosana*. ( )
24. Apple Ermine Moth, *Ypomoneuta malinellus*. ( )
25. Cherry Ermine Moth, *Enarmonia formosana*. ( )
26. European Grape Vine Moth, *Lobesia botrana*. ( )
27. European Grape Berry Moth, *Eupoecilia ambiguella*. ( )
28. Plum Fruit Moth, *Cydia funebrana*. ( )
29. Plum Curculio, *Conotrachelus nenuphar*. ( )
30. Leek Moth, *Acrolepiopsis assectella*. ( )
31. Bee Mite, *Tropilaelaps cleareae*. ( )
32. Small Hive Beetle, *Aethina tumida*. ( )
33. Africanized Honey Bee, *Apis mellifera*. ( )

34. Black Currant Gall Mite, *Cecidophyopsis ribis*. ( )
35. Exotic Bark Beetles, (Scolytidae). ( )
- a. *Scolytus mali*. ( )
- b. *Xylosandrus crassiusculus*. ( )
- c. *Xylosandrus germanus*. ( )
- d. *Xyleborus californicus*. ( )
36. Sunni Bug, *Eurygaster intergriceps*. ( )
37. German Yellowjacket, *Vespula germanica*. ( )
38. European Paper Wasp, *Polistes dominulus*. ( )
39. European Elm Bark Beetle, *Scolytus multistriatus*. ( )
40. Banded Elm Bark Beetle, *Scolytus schevyrewi*. ( )
41. Wheat Blossom Midge, *Sitodiplosis mosellana*. ( )
42. Potato Tuberworm, *Phthorimeaea operculella*. ( )
407. INVASIVE SPECIES -- PATHOGENS, DISEASES AND PARASITIC NEMATODES.
01. Whirling Disease, *Myxobolus cerebralis*. ( )
02. VHS, *Viral hemorrhagic septicemia*. ( )
03. Sudden Oak Death (Ramorum Blight), *Phytophthora ramorum*. ( )
04. Karnal Bunt, *Tilletia indica*. ( )
05. Bean Common Mosaic Virus, (strain US-6). ( )
06. Bean Common Mosaic Necrosis Virus (strain NL-3 and NL-5). ( )
07. Potato Wart, *Synchytrium endobioticum*. ( )
08. Golden Nematode, *Globodera rostochiensis*. ( )
09. Soybean Cyst Nematode, *Heterodera glycines*. ( )
10. Bacterial Wilt of Alfalfa, *Clavibacter michiganensis spp insidiosus*. ( )
11. Wheat Seed Gall Nematode, *Anguina tritici*. ( )
12. Pine Wilt Nematode, *Bursaphelenchus xylophilus*. ( )
13. Brown Rot of Potatoes, *Ralstonia solanacearum*, race 3, biovar 2 (alternate hosts include tomato, pepper, eggplant, and some greenhouse plants including geranium). ( )
14. Java Downy Mildew of Corn, *Peronosclerospora maydis*. ( )

15. Philippine Downy Mildew of Corn, *Peronosclerospora philipeninsis*. ( )
16. Asian Soybean Rust, *Phakospora pachyrhizi*. ( )
17. Plum Pox Potyvirus. ( )
18. Cherry Leaf Roll Virus. ( )
19. Stewart's Wilt of Corn, *Pantoea stewartii*. ( )
20. Brown Stripe Downy Mildew of Corn, *Sclerophthora rayssiae* var. *zeae*. ( )
21. Potato Spindle Tuber Viroid. ( )
22. Pierce's Disease of Grapes, *Xylella fastidiosa*. ( )
23. Black Currant Reversion Disease. ( )
24. Powdery Mildew of Hops, *Sphaerotheca macularis* (s. *humuli*). ( )
25. Bacterial Brown Spot of Beans, *Pseudomonas syringae* pv *syringa*. ( )
26. Wheat Smut, *Tilletia tritici*. ( )
27. Wheat Scab, *Fusarium graminearu*. ( )
28. Potato Ring Rot, *Corynebacterium sepedonicum*. ( )
29. Potato Late Blight, *Phytophthora infestans*. ( )
30. Onion White Rot, *Sclerotium cepivorum*. ( )
31. Sugar Beet Rhizomania (beet necrotic yellow vein virus (BNYVV) and transmitted by the soil fungus *Polymyxa betae*). ( )
32. White Pine Blister Rust, *Cronartium ribicola*. ( )
33. Cereal Cyst Nematode, *Heterodera avenae*. ( )
34. Columbia Root Knot Nematode, *Meloidogyne chitwoodi*. ( )
35. Onion Stem And Bulb Nematode, *Ditylenchus dipsaci* (onion race). ( )
36. Iris Yellow Spot Virus – IYSV of onions. ( )
37. Potato Mop Top Virus, PMTV. ( )
408. INVASIVE SPECIES -- INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS).
  01. Green or Burrowing Snail, *Cantareus apertus*. ( )
  02. Pulmonate Snail, *Helix pomatia*. ( )
  03. White Garden Snail, *Theba pisana*. ( )
  04. Giant African Snail, *Achatha fulica*. ( )



- 05. Lactea Snail, *Otala lacteal*. ( )
- 06. Maritime Garden Snail, *Cerneuella virgata*. ( )
- 07. Brown Garden Snail, *Cryptomphalus aspersa*. ( )
- 08. Wrinkled Snail, *Candidula intersecta*. ( )
- 09. Chinese Mystery Snail, *Bellamya chinensis*. ( )
- 10. Japanese Mystery Snail, *Bellamya japonica*. ( )
- 11. Apple Snail, *Pomacea spp.* ( )
- 12. Marisa, *Marisa cornuarietis*. ( )
- 13. Red-Lipped Melania, *Melanoides tuberculata*. ( )
- 14. Quilted Melania, *Tarebia granifera*. ( )
- 15. Decollate Snail, *Rumina decollata*. ( )
  
- 409. -- 499. (RESERVED).
  
- 500. **ADDITION OF SPECIES.**  
The Director may add or remove species to the invasive species list in this chapter by issuing a written order listing the invasive species and the reasons for adding them to or removing them from the invasive species list. ( )
  
- 501. -- 599. (RESERVED).
  
- 600. **PENALTIES FOR VIOLATION.**  
Any person who violates the provisions of this chapter shall be subject to the penalty provisions of Section 22-1913 and/or Section 22-2020, Idaho Code. ( )
  
- 601. -- 698. (RESERVED).
  
- 699. **MINOR VIOLATIONS.**  
Nothing in this chapter shall be construed as requiring the Department to report minor violations when the Department believes that the public interest will be best served by suitable warnings or other administrative action. ( )
  
- 700. -- 999. (RESERVED).

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.06.13 - RULES RELATING TO RAPESEED PRODUCTION AND ESTABLISHMENT OF RAPESEED DISTRICTS IN THE STATE OF IDAHO

DOCKET NO. 02-0613-0801

#### NOTICE OF INTENT TO PROMULGATE RULES - REQUEST FOR WRITTEN COMMENTS

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 22-108(2), Idaho Code.

**METHOD OF PARTICIPATION:** Persons wishing to participate in this request for written comments may do so by sending them to:

**Michael E. Cooper  
Plant Industries Division  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701-0790**

**DESCRIPTIVE SUMMARY:** The following is a statement in non-technical language of the substance and purpose of the request for written comments:

The production of edible and industrial rapeseed for commercial uses and, seed production has changed significantly since the current rules were adopted and the Department is being asked to update the rules to better reflect the current state of the industry in Idaho. Issues needing to be addressed include but are not limited to:

1. Erucic acid and glucosinolate levels in edible and industrial type of rapeseed;
2. Isolation distances between commercial rapeseed production and seed production;
3. Impact of volunteer plants on commercial and seed production fields;
4. The potential impacts of cross pollination of rapeseed with related vegetable seed production i.e. radish, mustard, rutabaga; and
5. Production of rapeseed for bio-diesel.

A copy of the current rules can be found at the following Internet Website: <http://adm.idaho.gov/adminrules/rules/idapa02/0613.pdf>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this request for comments, contact Michael E. Cooper, Bureau Chief or Thomas Dayley, Administrator at (208) 332-8620.

All written comments must be directed to the undersigned and must be delivered on or before the first day of January, 2009. As the process moves forward, and negotiated rulemaking is scheduled, additional written comments will be accepted.

DATED this 17th day of July, 2008.

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

**IDAPA 03 - STATE ATHLETIC COMMISSION**  
**03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION**  
**DOCKET NO. 03-0101-0801**  
**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 54-416, 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 15, 2008.

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 the rules are being made to set forth requirements for martial arts and mixed martial arts and to continue to outline standards for the safety of the combatants. The current rules pertain primarily to boxing and wrestling rather than martial arts and mixed martial arts.

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

No fees or charges are being imposed through this rulemaking.

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

This rulemaking does not impact the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the discussion was held in an open meeting of the board and the changes will increase safety of combatants.

**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 22, 2008.

DATED this 21st day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 03-0101-0801**

**010. DEFINITIONS.**

- 01. Bureau.** The Bureau of Occupational Licenses, as prescribed in Section 67- 2602, Idaho Code. (3-26-08)
- 02. 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. Combatant.** Any boxer, kickboxer, martial artist or wrestler who takes part as a competitor in an event under the jurisdiction of the commission. (3-26-08)
- 04. Commission.** The Idaho Athletic Commission created under Title 54, Chapter 4, Idaho Code, or designated agent. (3-26-08)
- 05. Commissioner.** The state athletic commissioner, as prescribed in Section 54-401, Idaho Code. (3-26-08)
- 06. Event.** Any contest, match, or exhibition of unarmed combat under the jurisdiction of the commission. (3-26-08)
- 07. Physician.** A ~~doctor of medicine~~ physician licensed by the Idaho Board of Medicine. (~~3-26-08~~)( )
- 08. Ring Official.** Ring officials include referees, judges, timekeepers and gloves. ( )
- 089. 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. (3-26-08)
- 0910. 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 documenting a person's entrance to an event. (3-26-08)
- 11. Mixed Martial Arts (MMA).** A full contact sport that allows a wide variety of unarmed combat techniques from a mixture of martial arts traditions to be used in competitions. ( )

**011. -- 099. (RESERVED).**

**100. LICENSING.**

- 01. Application for License.** An application for a license must be submitted to the Bureau on a form supplied by the Commission and be verified under oath by the applicant for each of the following: (3-26-08)
- a.** Professional ~~boxer~~ Combatant; (~~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; or (~~3-3-94~~)( )
- g.** ~~Referee~~ Ring Official; (~~3-3-94~~)( )

~~h.~~ *Judge; or* (3-26-08)

~~i.~~ *Timekeeper.* (3-26-08)

**02. Complete Applications.** All applications ~~shall~~ must 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. (3-26-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. PHYSICAL EXAMINATION OF COMBATANT.**

**01. Examination by Physician.** Any combatant who has applied for a license or a renewal of his license must be examined by a physician. The physician ~~shall~~ will establish the combatant's physical and mental fitness for competition. (3-26-08)(\_\_\_\_)

**02. Additional Examination.** Any combatant licensed by the Commission who participates in a contest outside of the state of Idaho may be required to take this examination again before being allowed to compete in Idaho. (3-26-08)

**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. Blood Testing.** The Commission will not issue a license to an athlete who has tested positive for the HIV virus, ~~Hepatitis B Surface Antigen and Hepatitis C Antibody~~, or illegal drugs or other substances. A current test report must accompany the license application. (3-26-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. HONORING ACTIONS OF REGULATORY AGENCIES IN OTHER JURISDICTIONS.**

The Commission may honor the following actions of agencies in other jurisdictions which regulate boxing, wrestling, ~~or~~ martial arts, or combination thereof: (3-26-08)(\_\_\_\_)

**01. Suspension.** A suspension of a combatant ordered for: (3-26-08)

**a.** Medical safety; (3-3-94)

**b.** A violation of a law or rule governing boxing, wrestling, ~~or~~ martial arts, or combination thereof which also exists in this state; or (3-26-08)(\_\_\_\_)

**c.** Any other conduct which discredits boxing, wrestling, ~~or~~ martial arts, or combination thereof as determined by the Commission. (3-26-08)(\_\_\_\_)

**106. TIME BETWEEN CONTESTS.**

In no case may a combatant (excluding wrestlers) participate in more than one (1) contest or exhibition in any twenty-four (24) hour period. Without the special permission of the Commission, a combatant may not compete in this state unless: (3-26-08)(\_\_\_\_)

**01. Four Days.** Four (4) days have elapsed since the combatant's last contest if the contest lasted not more than four (4) rounds. (3-26-08)

**02. Seven Days.** Seven (7) days have elapsed since the combatant's last contest if the contest lasted five (5) or six (6) rounds. (3-26-08)

**03. Fourteen Days.** Fourteen (14) days have elapsed since the combatant's last contest if the contest lasted seven (7) or eight (8) rounds. (3-26-08)

**04. Twenty-One Days.** Twenty-one (21) days have elapsed since the combatant's last contest if the contest lasted nine (9) or ten (10) rounds. (3-26-08)

**05. Forty-Five Days.** Forty-five (45) days have elapsed since the combatant's last contest if the contest lasted eleven (11) or twelve (12) rounds. (3-26-08)

~~**06. Sixty Days.** Sixty (60) days have elapsed since the combatant's last contest if the contest lasted thirteen (13), fourteen (14), or fifteen (15) rounds. (3-26-08)~~

**107. FEMALE COMBATANTS.**

**01. Qualifications.** A female combatant must be qualified to perform as a combatant before she enters a contest. (3-26-08)

**02. Limitation.** A female combatant ~~shall~~ will not engage in a contest with a male combatant. (3-26-08)(\_\_\_\_)

**03. General Requirements.** In addition to meeting such requirements of this chapter as are applicable to combatants generally, a female ~~shall~~ must: (3-26-08)(\_\_\_\_)

**a.** Submit to pregnancy test within fourteen (14) days of the contest. (\_\_\_\_)

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

**b**c.**** Wear ten (10) ounce gloves in a boxing contest; (3-26-08)

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

**d**e.**** Have her hair secured in a manner that does not interfere with the vision or safety of either combatant; and (3-26-08)

**e**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 combatant ~~shall~~ must, in addition to signing the contract, sign an addendum certifying that the combatant is not pregnant and that the contest will not take place during a menstrual period. (3-26-08)(\_\_\_\_)

**05. Limitation on Contest.** A contest between female combatants must be limited to ten (10) rounds of two (2) minutes duration. (3-26-08)

**06. Separate Dressing Rooms.** The promoters of a contest between female combatants ~~shall~~ must provide them with adequate separate dressing rooms. (3-26-08)(\_\_\_\_)

**07. Annual Physical Examination.** The annual physical examination of a female combatant ~~shall~~ must include an examination of the pelvis. Before each contest, the examining physician ~~shall~~ must make an abdominal examination and ~~shall~~ must examine the breasts and note any masses. (3-26-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**109. CRITERIA FOR APPROVAL OF SANCTIONING PERMITS.**

**01. Final Authority.** The Commission is the final authority on all sanctioning organizations for amateur events. Any organization representing itself as a sanctioning body must meet the following requirements: ( )

**a.** All events must be conducted in accordance with the sanctioning bodies' rules as approved by the Commission: ( )

**b.** All officials must meet the training and certification requirements set by the Commission: ( )

**c.** The sanctioning body must provide evidence of sufficient liability insurance for the officials: ( )

**d.** The sanctioning body must not let the event proceed unless proof of medical insurance for combatants is provided, an ambulance and EMT's are present and on site at all times, and a Commission approved physician or physicians, as determined by Commission regulations, is onsite and ringside: ( )

**e.** The sanctioning body cannot have any direct or indirect financial interest in the fighters or the promotion: ( )

**f.** The sanctioning body must agree that the combatants are not to receive any type of purse payment, or compensation except as approved by the Commission: ( )

**g.** The sanctioning body must oversee the weigh-ins, the hand wrapping, and glove placement after inspecting the gloves as required by the sanctioning bodies' rules as approved by the Commission; and ( )

**h.** The sanctioning body must inspect and approve the contest area prior to the start of the contests. ( )

**02. Violations.** Any violation of these requirements may result in actions by the Commission to remove the organization as a recognized sanctioning body with respect to amateur events. ( )

**~~109~~110. MANAGER ACTING AS SECOND.**

A manager licensed by the Commission may act as a second without having a second's license. (3-3-94)

**~~110~~11. REQUIREMENTS FOR LICENSE AS ~~REFEREE, JUDGE, TIMEKEEPER, OR GLOVER~~ RING OFFICIAL.**

**01. Qualifications.** To qualify for a license as a ~~glover, referee, judge, or timekeeper~~ ring official of ~~boxing~~ contests, an applicant must: (3-26-08)( )

**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; (3-26-08)

**c.** Have had at least one (1) year experience in either amateur or professional ~~boxing~~ contest as a ~~glover, referee, judge, or timekeeper, whichever is appropriate~~ ring official; (3-26-08)( )

**d.** Submit verifications from three (3) persons of his proficiency as a ~~glover, referee, judge, or~~

~~timekeeper, whichever is appropriate~~ ring official; and ~~(3-26-08)(\_\_\_\_\_)~~

- e. Provide proof that the applicant meets the other requirements of the commission law and rules. (3-26-08)

**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. (3-26-08)

**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 by the commission ~~shall be~~ is annually renewable in accordance with Section 67-2614, Idaho Code. The renewal of a license is not automatic. The applicant's past performance and abilities may be considered in evaluating an application for renewal. ~~(3-26-08)(\_\_\_\_\_)~~

#### **1142. REQUIREMENTS FOR RINGSIDE PHYSICIAN.**

**01. Board of Medicine.** Ringside physicians ~~shall~~ must be currently licensed by the Idaho Board of Medicine. ~~(3-3-94)(\_\_\_\_\_)~~

**02. Cardiopulmonary Resuscitation.** A ringside physician must be certified to perform cardiopulmonary resuscitation. (3-26-08)

#### **1143. APPLICANTS, LICENSEES, AND OFFICIALS.**

Any ring official, any person licensed by the Commission and any applicant for a license must submit to the Commission any forms, records, and statements at the times and manner as directed by the Commission. (3-3-94)

#### **1144. 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: (3-26-08)

**01. Subject to Discipline.** Performed any act which constitutes a violation of the laws or rules of the commission. (3-26-08)

**02. Specific Conduct.** (3-26-08)

- 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. Engages in any fraud or misrepresentation in the application process; (3-26-08)
- e. Has a recent history of drug abuse or fails a drug test or refuses to submit to a drug test; (3-26-08)
- 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 a contest regulated by the commission. (3-26-08)

~~1145.~~ -- 149. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. APPROVAL OF EVENTS.**

**01. Prior Approval.** No contest ~~shall~~ will 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~~ must be made on a form provided by the Bureau. (3-26-08)(    )

**02. Deadline.** A complete application for a sanctioning permit together with ~~all requested supporting documentation~~ application fees, applicable bond amount, proof of insurance, and information regarding the combatants named in the main and semi-main contest must be received by the commission no less than thirty (30) days prior to the date requested for the event named in the application. Combatants named in contests may be changed at the discretion of the commission. (3-26-08)(    )

**03. 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 all fees and ~~shall~~ will be grounds for disciplinary action. (3-26-08)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**304. ARRANGEMENT OF ~~MATCH~~ CONTEST FOR PROMOTER.**

A ~~boxing or wrestling match~~ contest may not be arranged on behalf of any promoter except by a licensed matchmaker. (3-3-94)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**307. CERTAIN PERSONS RETAINED MUST HAVE LICENSES.**

No person ~~shall~~ will be retained for any of the following positions unless currently licensed by the Commission: (3-26-08)(    )

- ~~01.~~ **Referee.** (3-3-94)
- ~~02.~~ **Second.** (3-3-94)
- ~~03.~~ **Timekeeper.** (3-3-94)
- ~~04.~~ **Combatant.** (3-26-08)
- ~~05.~~ **Glover.** (3-26-08)
- ~~06.~~ **Matchmaker.** (3-3-94)

- ~~07.~~ ~~Judge.~~ (3-3-94)  
04. Ring Official. ( )

**308. OFFICIALS OF ~~BOXING OR WRESTLING MATCHES~~ EVENTS.**

- 01. Officials Described.** The officials of ~~boxing and wrestling matches~~ events are the referee, judges, timekeeper, physician, and the Commission's agents. (3-26-08)( )
- 02. Commission Involvement.** All the officials ~~shall~~ must be approved and assigned by the Commission. The promoter may select the announcer, subject to the Commission's approval. (3-26-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ must 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 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. (3-26-08)( )

**02. Refunds.** If such change occurs and any patron desires a refund of the ticket price, the promoter must provide a refund upon presentation of the ticket or the ticket stub at the box office before the event is scheduled to begin. The box office must remain open a reasonable length of time to redeem such tickets. (3-26-08)

**03. Substitutions.** A combatant may not substitute for another combatant in a contest which is the main and semi-main events ~~in a program of boxing~~ unless the Commission approves the substitution. (3-26-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**316. SOLICITATION IN THE ARENA.**

A person may not solicit in any arena ~~for boxing or wrestling~~ without the written permission of the Commission. (3-3-94)( )

**317. CONTAINERS.**

All drinks at ~~a boxing or wrestling program~~ an event must be dispensed in paper or plastic cups. (3-3-94)( )

**318. -- 399. (RESERVED).**

**400. ADMISSION FEE AT QUARTERS WHERE ~~BOXER~~ COMBATANT TRAINS.**

**01. Fee.** An admission fee may not be charged to enter the quarters where a ~~boxer~~ combatant is training unless the Commission has authorized the charging of admission. Where such an admission fee is charged, the Commission will consider the charge to be for the privilege of seeing an exhibition ~~of boxing.~~ (3-3-94)( )

**02. State Fee.** The state fee on those gross receipts, exclusive of any federal taxes paid thereon, must be sent to the Commission with the report. (3-3-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 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. (3-26-08)

**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. (3-26-08)

**03. Sanitary.** If gloves to be used in preliminary contests have been used before, they must be whole, clean and in sanitary condition. The gloves are subject to inspection by the referee or the Commission. If found to be unfit, they must be immediately discarded and replaced with gloves meeting the requirements of this section. (3-26-08)

**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 contest. (3-26-08)

**05. Weight of Gloves.** Each combatant must wear gloves ~~which weigh that are~~ not less than eight (8) ounces and not more than ten (10) ounces in weight except that the Commission will set the weight of gloves to be used in a championship fight. Eight (8) ounce gloves ~~shall~~ must be used for all weight classes through ~~Middleweight~~ welterweight (one hundred forty-seven (147) lbs). Super ~~middleweight~~ welterweight (above one hundred forty-seven (147) lbs) and above ~~shall~~ must use ten (10) ounce gloves. (3-26-08)( )

**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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**602. WEIGH-IN, EXAMINATION OF ~~BOXER~~ COMBATANT MAY BE ORDERED BY THE COMMISSION.**

Any ~~boxer combatant~~ who has signed a contract to box on a promoter's program is subject to an order by the Commission to appear at any time to be weighed or examined by any physician ~~whom~~ designated by the Commission ~~may designate~~. (3-3-94)( )

**603. ADVANCE APPEARANCE OF ~~BOXERS~~ COMBATANT SCHEDULED TO FIGHT IN MAIN EVENT.**

**01. When to Appear.** Each ~~boxer~~ combatant who is scheduled to fight in a main event, except a ~~boxer combatant~~ in a regularly scheduled weekly ~~bout~~ contest, must be present in any place specified by the promoter at least three (3) days before the scheduled day of the ~~bout~~ contest for the purpose of training, publicity, and whatever other purpose the promoter may desire, unless the ~~boxer~~ combatant has the Commission's express written approval to be absent. (7-1-93)( )

**02. Expenses.** Unless otherwise provided for in the contract, the ~~boxer's~~ combatant's expenses for this purpose must be borne by the promoter. If a boxer fails to comply with this requirement, the promoter, subject to approval of the Commission, may deduct ten percent (10%) of the offending ~~boxer's~~ combatant's purse. (7-1-93)( )

**604. WEIGHING IN OF COMBATANTS.**

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

Commission at any place designated by the Commission. (3-26-08)

**02. Attire.** The ~~boxer~~ combatant 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 provide official identification as such ~~shall~~ will be admitted to each official weighing in of a combatant. (~~3-26-08~~)( )

**04. Security.** The owner or operator of the premises in which the weighing in is held ~~shall~~ must provide adequate security for the combatant and other persons who are present. (~~3-26-08~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**606. PHYSICAL AND EYE EXAMINATION OF COMBATANTS ~~AT TIME OF WEIGH-IN.~~**  
A physician designated by the Commission ~~shall~~ must give each combatant a thorough physical and eye examination at the time of his weigh-in or not less than two (2) hours before the contest. (~~3-26-08~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Determination of Physician.** The physician who examines any combatant or referee who has contracted to participate in an ~~boxing program shall~~ event will determine that a combatant or referee ~~shall~~ will not participate in the ~~program event~~ and ~~shall~~ must immediately report such finding to the promoter and the Commission if: (~~3-26-08~~)( )

a. The combatant is unfit for competition; or (3-26-08)

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

**02. Written Certification.** If the examining physician finds that the combatants and referees are in good physical condition, the physician ~~shall~~ must, one (1) hour before the start of the ~~boxing program event~~, give written certification of those findings to the Commission. (~~3-26-08~~)( )

**03. Physician's Written Report.** Within twenty-four (24) hours after the ~~program event~~ ends, the physician ~~shall~~ must 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~~)( )

**609. ~~BOXER'S~~ COMBATANT'S REPORT OF OWN ILLNESS OR INJURY; EXAMINATION; FEE.**

**01. ~~Boxer's~~ Combatant's Report of Non-Participation to Commission.** When a licensed ~~boxer~~ combatant is unable to take part in a contest for which he is under contract because of injury or illness, he ~~shall~~ must immediately report the fact to the Commission and ~~shall~~ must submit to an examination by a physician designated by the Commission. (~~3-3-94~~)( )

**02. Payment of Fees to Physician.** The fee for the physician's examination must be paid by the promoter if he has requested the examination, otherwise the fee must be paid by the ~~boxer~~ combatant. (~~3-3-94~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. INTRODUCTION FROM RING.**

Only a combatant or person officially identified with ~~boxing or wrestling~~ the contest may be introduced from the ring at an event, except with specific authority to do so from the Commission. (3-26-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**708. CONTINUOUS PRESENCE OF PHYSICIAN AT RINGSIDE.**

**01. Presence of Physician at Ringside.** The physician designated by the Commission ~~shall~~ must sit at the immediate ringside at every ~~boxing and wrestling bout event~~. A ~~bout~~ contest may not proceed unless the physician is in his seat at ringside. The physician ~~shall~~ must not leave until released by the Commission. He ~~shall~~ must be prepared to assist if any serious emergency arises and ~~shall~~ must render temporary or emergency treatments for cuts and minor injuries sustained by the ~~contestants~~ combatants. (3-3-94)(\_\_\_\_)

**02. Injury to Boxer During Round.** ~~Where~~ When a ~~boxer~~ combatant appears to have been injured during the course of a round, his manager or second ~~shall~~ must not attempt to render aid to him before the physician has had an opportunity to examine him. (3-3-94)(\_\_\_\_)

**709. WARNING BEFORE START OF ROUND.**

Ten (10) seconds before the beginning of each round the timekeeper ~~shall~~ will give warning to the seconds of the ~~contestants~~ combatants by blowing a whistle. (3-3-94)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**713. UNFAIR PRACTICES; DUTIES OF REFEREES.**

**01. Enforcing the Rules.** A referee is responsible for enforcing the rules of the contest. He ~~shall~~ must not permit unfair practices that may cause injury to a ~~contestant~~ combatant. (3-3-94)(\_\_\_\_)

**02. Warnings.** The referees ~~shall~~ must warn the ~~boxers~~ combatants whenever they are committing fouls. (3-3-94)(\_\_\_\_)

**03. Deducting Points.** If a ~~boxer~~ combatant persists in committing fouls after he has been warned, the referee ~~shall~~ will deduct points from him or disqualify him. (3-3-94)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**715. FOULS -- DISQUALIFICATION OF COMBATANT AND WITHHOLDING OF PURSE.**

Any combatant guilty of a foul in a ~~boxing~~ contest may be disqualified by the referee and the participant's purse ordered withheld by the Commission. Disposition of the purse and the penalty to be imposed upon the combatant will be determined by the Commission. (3-26-08)(\_\_\_\_)

**716. ACCIDENTAL FOULING.**

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

foul was accidental.

(3-26-08)(\_\_\_\_)

**02. Contest Stopped Due to Accidental Foul.** If the referee determines that the 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 one-half (1/2) of the total scheduled rounds. (3-26-08)

~~**03. Combatant Unable to Finish Bout.** If an accidental foul renders a 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 contest. (3-26-08)~~

**043. Contest Stopped by Referee.** If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the 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 contest. (3-26-08)

**717. STOPPING OF CONTEST -- INJURY TO ~~BOXER~~ COMBATANT.**

The referee, in consultation with the ring physician designated by the Commission, ~~shall will~~ determine whether a contest should be stopped because of an injury to a ~~boxer~~ combatant. (7-1-93)(\_\_\_\_)

**718. STOPPING OF CONTEST -- ONE-SIDED CONTEST; RISK OF INJURY; EXAMINATION BY PHYSICIAN.**

**01. One-Sided Contested.** The referee may stop a contest at any stage if he considers it too one-sided or if either ~~contestant~~ combatant is in such a condition that to continue might subject him to serious injury. (3-3-94)(\_\_\_\_)

**02. Risk of Injury and Examination by Physician.** If a ~~boxer~~ combatant sustains any injury which the referee believes may incapacitate him, the referee ~~shall must~~ call the physician into the ring to examine the ~~boxer or wrestler~~ combatant. The physician ~~shall must~~ give his opinion to the referee before the referee renders his decision in the matter. (3-3-94)(\_\_\_\_)

**719. STOPPING THE CONTEST -- ~~CONTESTANT~~ COMBATANT NOT HONESTLY COMPETING.**

If the referee decides that a ~~contestant~~ combatant is not honestly competing, he may stop the ~~bout~~ contest before its scheduled completion, disqualify the ~~contestant~~ combatant and recommend the purse of that ~~contestant~~ combatant be held pending investigation by the Commission. The announcer ~~shall will~~ then inform the audience that no decision has been rendered. (3-3-94)(\_\_\_\_)

**720. FAILURE OF ~~CONTESTANT~~ COMBATANT TO RESUME ~~BOXING~~.**

A ~~contestant~~ combatant ~~shall must~~ not leave the ring during any one (1) minute rest period between rounds. If any ~~contestant~~ combatant fails or refuses to resume ~~boxing~~ the contest when the bell sounds signaling the commencement of the next round, the referee ~~shall will~~ award a decision of technical knockout to his opponent as of the round which has last been finished, unless the circumstances indicate to the referee the need for investigation or punitive action, in which event the referee ~~shall will~~ not give a decision and ~~shall will~~ recommend the purse or purses of either or both ~~boxers~~ combatants to be withheld. (3-3-94)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Knockdown.** When a combatant is knocked down, the referee ~~shall will~~ order the opponent to retire to the farthest neutral corner of the ring, pointing to the corner, and immediately begin the count over the combatant who is down. The referee ~~shall must~~ audibly announce the passing of the seconds, accompanying the count with motions of his arm, the downward motion indicating the end of each second. (3-26-08)(\_\_\_\_)

**02. Timekeeper.** The timekeeper, by effective signaling, ~~shall will~~ 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 will~~ cease counting. No combatant who is knocked down may be allowed to resume boxing until the referee has finished counting to eight (8). The combatant may take the count either on the floor or standing. (3-26-08)(\_\_\_\_)

**03. Failure of Opponent to Stay in Farthest Neutral Corner.** If the opponent fails to stay in the farthest neutral corner, the referee ~~shall will~~ cease counting until he has returned to his corner and ~~shall will~~ then go on with the count from the point at which it was interrupted. If the combatant who is down arises during the count, the referee may step between the combatants long enough to assure himself that the combatant just arisen is in condition to continue. If so assured, he ~~shall will~~, without loss of time, order both combatants to go on with the contest. During the intervention by the referee the striking of a blow by either combatant may be ruled a foul. (3-26-08)(\_\_\_\_)

**04. Knock-Out.** When a combatant is knocked out, the referee ~~shall must~~ perform a full ten (10) second count unless, in the judgment of the referee, the safety for the combatant would be jeopardized by such a count. If the combatant who is knocked down is still down when the referee calls the count of ten (10), the referee ~~shall must~~ wave both arms to indicate that he had been knocked out and ~~shall must~~ raise the hand of the opponent as the winner. (3-26-08)(\_\_\_\_)

**05. Both Combatants Down.** If both combatants go down at the same time, the count ~~shall must~~ be continued as long as one (1) is still down. If both combatants remain down until the count of ten (10), the contest must be stopped and the decision is a technical draw. (3-26-08)(\_\_\_\_)

**06. Combatants Down -- Referee Counting.** If a combatant is down ~~and the referee is in the course of counting at the end of~~ as a result of a legal blow at or near the end of a round, the ring official must continue the count. The combatant cannot be saved by the bell. (3-26-08)(\_\_\_\_)

~~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 combatant regains his feet. (3-26-08)~~

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

~~07. Combatant Down -- Round Terminates.~~ When a 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: (3-26-08)

~~a. If the round is other than the final round, the referee's count must be continued. If the combatant who is down fails to arise before the count of ten (10), he is considered to have lost the contest by a knockout in the round that was just concluded. (3-26-08)~~

~~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)~~

**087. Knockdown After Bell Has Sounded.** If a legal blow struck in the final seconds of a round causes a 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. (3-26-08)

**098. Three Knockdowns in Same Round.** ~~Any 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.~~ There is no three (3) knockdown limit. (3-26-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**724. ADJUDICATION OF TECHNICAL KNOCKOUT.**

**01. Contest Termination.** It must be adjudged a technical knockout to the credit of the winner if a

contest is terminated because a ~~contestant~~ combatant is: ~~(3-3-94)~~(3-3-94)

- ~~a.~~ **a.** ~~Knocked down three (3) times in the same round;~~ ~~(3-3-94)~~
- ba.** Unable to continue; (3-3-94)
- cb.** Not honestly competing; (3-3-94)
- dc.** Injured; or (3-3-94)
- ed.** Disqualified. (3-3-94)

**02. Win by Other Than Full Count.** A contest which is won by other than a full count of ten (10) or the scoring of the judges must be adjudged a technical knockout to the credit of the winner. (3-3-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**726. WHEN ~~BOXER~~ COMBATANT FALLS FROM RING DURING ROUND.**

**01. ~~Contestant~~ Combatant Knocked or Falls from Ring Platform.** A ~~contestant~~ combatant who has been knocked or has fallen through the ropes and over the edge of the ring platform during the contest may be helped back by anyone except his seconds or manager, and the referee may allow a reasonable amount of time for the ~~contestant~~ combatant to return to the ring. If the ~~contestant~~ combatant is on the ring platform outside the ropes, he must enter the ring immediately where he may resume the contest or take a count. The referee ~~shall~~ must start the count as soon as the ~~contestant~~ combatant who had fallen is back in the ring. ~~(3-3-94)~~( )

**02. Stalling Outside Ropes.** If the ~~contestant~~ combatant stalls for time outside the ropes, the referee ~~shall~~ must start the count without waiting for him to reenter the ring. ~~(3-3-94)~~( )

**03. ~~Boxer~~ Combatant to Neutral Corner.** When one (1) ~~boxer~~ combatant has fallen through the ropes, the other ~~boxer~~ shall combatant must retire to the farthest corner and stay there until ordered to continue the contest by the referee. ~~(3-3-94)~~( )

**04. Penalty.** A ~~contestant~~ combatant who deliberately wrestles or throws an opponent from the ring, or who hits when he is partly out of the ring and is prevented by the ropes from assuming a position of defense, may be penalized. ~~(3-3-94)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**729. CHANGE OF DECISION IN ~~BOXING~~ CONTEST.**

The Commission will not change a decision rendered at the end of any boxing contest unless: ~~(3-3-94)~~( )

**01. Collusion.** The Commission determines that there was collusion affecting the result of the contest; (3-3-94)

**02. Error in Scoring.** The compilation of scorecards of the judges discloses an error which shows that the decision was given to the wrong boxer; or (3-3-94)

**03. Error in Interpretation of Rules.** As a result of an error in interpreting a provision of this chapter, the referee has rendered an incorrect decision. (3-3-94)

**04. Failure of Drug Test.** The Commission determines that there was a violation of Section 900.



( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**731. MARTIAL ARTS AND MIXED MARTIAL ARTS (MMA).**

**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.~~ **Regulation of Marital Arts and MMA.** Except to the extent set forth under Rules 731-799, all requirements and the limitations relating to combatants and licenses (as set forth within Title 54, Chapter 4, Idaho Code, and in the remaining rules of the Commission) will apply to all martial arts and MMA 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)( )

**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~~ combatants 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 will~~ 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 must~~ be in good condition as approved by the commission. For the main and semi main events gloves ~~shall must~~ be in new condition and of the same brand for combatants. (3-26-08)( )

**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)

**732. MMA EQUIPMENT.**

The Commission is the final authority in all equipment matters. The following is a list of required equipment for MMA contests: ( )

**01. Commission Approved Mouthpiece.** All combatants are required to wear a mouthpiece during the contest. It is strongly recommended that all combatants have two (2) form fitted mouthpieces available for use in each contest. ( )

a. **To Begin the Round.** The round cannot begin if the mouthpiece is not inside the combatant's mouth and set in place. ( )

b. During the Contest. The mouthpiece must be inside the combatant's mouth and properly set at all times during the contest. ( )

c. Dislodged Mouthpiece. If the mouthpiece is dislodged during the contest, the referee will wait until the first opportune moment, without interfering with the action, call time out, and have the mouthpiece replaced. ( )

d. Violations. At the discretion of the referee, points may be deducted or a disqualification rendered in the following situations: ( )

i. When the mouthpiece is not being properly kept inside of the combatant's mouth; ( )

ii. When the mouthpiece is purposely spit out; or ( )

iii. When the corner fails to have the combatant resume competition with the mouthpiece in place or delays in replacing the mouthpiece after it becomes dislodged. ( )

**02. Commission Approved MMA Gloves.** ( )

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

b. Weight: Each combatant must wear gloves that are not less than four (4) ounces in weight; ( )

c. Specifications. Each combatant must wear open finger gloves that have no padding in the palm or fingertip area and that are appropriate in weight for the combatant's hand size. Under no circumstances will a combatant be allowed to wear bag gloves or any other gloves with metal or plastic inserts. ( )

**03. Commission Approved Attire.** ( )

a. Each combatant must wear a foul-proof groin protector. ( )

b. Each female combatant must wear Commission-approved form fitting breast support protection. Supports may not have brace, metal or hard material of any kind. ( )

c. For male combatants, no body shirts or pants are allowed. Female combatants must wear fighting shorts and rash guard. ( )

d. Combatant may only use soft materials to tie hair. ( )

**04. Prohibited Equipment and Attire.** ( )

a. The following equipment and attire are prohibited: ( )

i. Shoes; ( )

ii. Facial hair, if determined by the Commission to pose a health, safety or sanitary issue; ( )

iii. Tar material on any part of the body; ( )

iv. Henna-type tattoos; ( )

v. Piercing accessories; and ( )

vi. Makeup of any kind. ( )

- b.** Masks, costumes, and props must be approved by the Commission prior to usage. ( )
- c.** Fingernails and toenails must be cut and trimmed prior to a contest. ( )

**733. FAIR TECHNIQUES AND FOULS IN MMA EVENTS.**

**01. Fair Techniques.** Fair MMA techniques include the use of striking and grappling techniques, either while standing or on the ground, subject to techniques designated by the rules as fouls. ( )

**02. Fouls.** The following actions will constitute fouls during any professional MMA competition: ( )

**a.** Head Butting. Head-butting or striking with the head in any manner. Any use of the head as a striking instrument whether head to head, head to body or otherwise is illegal. ( )

**b.** Eye-gouging. Eye-gouging by means of fingers, chin, or elbow is illegal. Legal strikes or punches that contact the combatant's eye socket are not eye gouging and will be considered legal attacks. ( )

**c.** Biting. Biting in any form is illegal. A combatant must recognize that a referee may not be able to physically observe some actions and must make the referee aware if they are being bitten during an exhibition of unarmed combat. ( )

**d.** Hair Pulling. Pulling the hair in any manner is an illegal action. A combatant may not grab hold of an opponent's hair in order to control the opponent in any way. ( )

**e.** Fish Hooking. Any attempt by a combatant to use his fingers in a manner that attacks an opponent's mouth, nose, or ears, or stretching the skin to that area, will be considered "Fishhooking." Fishhooking generally is the placing of fingers into the mouth of an opponent and pulling the hands in opposite directions while holding onto the skin of the opponent. ( )

**f.** Groin Attacks. Any attack to the groin area, including striking, grabbing, pinching or twisting, is illegal. ( )

**g.** Smothering. Cupping a hand over an opponent's mouth and nose is illegal. ( )

**h.** Vertical Elbows. Elbows thrown from vertical angle are illegal. Elbows thrown from any other angle are legal. ( )

**i.** Knee strikes to the Head (standing or grounded fighter). No knee strikes of any kind are allowed to a combatant's head during the contest. During the standing portion of the contest combatants are allowed to knee to the body and the legs. When a combatant goes to the ground, knees to the body are allowed. ( )

**j.** Back of Head Strikes. Strikes to the back of the head are illegal. The back of the head is considered from the crown of the head down the centerline of the skull into the spine, with a one (1) inch variance to each side, similar to a mohawk haircut. Strikes that are thrown to areas behind the ears but not within the mohawk limitation are legal strikes. ( )

**k.** Hand Chokes. Hand chokes are illegal. A combatant may not attack an opponent with a choke utilizing only his hand or hands in an attempt to submit an opponent. A common phrase for this type of choke is the "C clamp" choke wherein the thumb is placed on one side of an opponent's neck with the fingers on the opposite side. ( )

**l.** Fingers. A combatant may not place his fingers into an open laceration on an opponent in an attempt to enlarge the cut. A combatant may not place his fingers into an opponent's nose, ears, mouth, or any body cavity. ( )

**m.** Small Joint Manipulation. Small joint manipulation is illegal. Fingers and toes are small joints.

Wrists, ankles, knees, shoulders and elbows are all large joints. ( )

n. Spine Attacks (strikes and locks). No striking attacks to the spine or locks, such as the “Twister,” are allowed. ( )

o. Throat Strikes. Throat strikes of any kind including, without limitation, grabbing the trachea are illegal. ( )

i. No directed throat strikes are allowed. A directed attack would include a combatant pulling an opponent’s head in a way to open the neck area for a striking attack. Directed throat attacks are not punches that connect during an exchange from the standing position while combatants are engaged in combat. ( )

ii. A combatant may not gouge his fingers or thumb into an opponent’s neck or trachea in an attempt to submit the opponent. ( )

iii. All arm chokes such as the “rear naked,” “guillotine” and “bar arm” are legal. ( )

p. Skin Clawing. Any attack that targets the combatant’s skin by clawing at the skin or attempting to pull or twist the skin to apply pain is illegal. ( )

q. Head and Groin Kicking. Kicking the head or groin of a grounded opponent is illegal. A grounded opponent is any combatant who has more than just the soles of the feet on the ground. If the referee determines that a combatant would be a grounded combatant, but not solely because the ring ropes or cage fence has held the combatant up from the ground, the referee can instruct the combatants that the combatant held up solely by the cage or ropes is being treated as a grounded combatant. A combatant can be kicked to the body when he is on the ground with any type of legal kick, but may not be kicked in the head or groin. ( )

r. Stomping. Stomping is illegal. ( )

i. Stomping is considered any type of striking action with the feet wherein the combatant lifts his leg, bending it at the knee, and initiates a striking action with the bottom of the foot or heel. This includes stomping the feet while both combatants are standing. ( )

ii. Axe kicks are not stomps. ( )

s. Pile-driving. Pile-driving an opponent into the mat is illegal. ( )

i. A pile driver is considered to be any throw wherein a combatant controls an opponent’s body by placing the opponent’s feet straight up in the air and the head straight down and then forcibly driving the opponent’s head into the canvas or flooring material. ( )

ii. It should be noted that if a combatant is placed into a submission hold by his opponent and the combatant is capable of elevating his opponent, the combatant may bring his opponent down in any manner because he is not in control of his opponent’s body. The combatant who is attempting the submission can either adjust his position or let go of the hold before being slammed to the canvas. It is crucial that referees are properly advised and trained on this and that the combatants fully understand this at the rules meeting. ( )

t. Throwing Opponent. Purposely throwing an opponent out of the ring or caged area is illegal. A combatant will not intentionally or purposely throw an opponent out of the ring or cage. ( )

u. Holding. Holding the shorts or gloves of an opponent is not allowed. A combatant may not control an opponent’s movement by holding onto the opponent’s shorts or gloves. A combatant may hold onto or grab an opponent’s hand as long as the combatant is not controlling the opponent’s hand by using only the material of the glove but is actually gripping the hand. It is legal for a combatant to hold onto his own gloves or shorts. ( )

v. Unsportsmanlike Conduct. Engaging in any unsportsmanlike conduct is not allowed. Any type of behavior or conduct observed or heard by the referee that can be considered detrimental or disrespectful towards an

opponent or the sport of MMA. This includes, but is not limited to, spitting at an opponent, using abusive language or abusive gestures, etc. ( )

**w.** Holding the Ropes or Fence. Holding the ropes or the fence is illegal. ( )

**i.** A combatant may put his hands on the fence and push off at any time. A combatant may place his feet onto the cage and have his toes go through the fencing material at any time. If a combatant's fingers go through the cage and he grabs hold of the fence and starts to control either his body position or his opponent's body position, it is an illegal action. A combatant may not grab the ropes or wrap his arms over the ring ropes at any time. ( )

**ii.** If a combatant is caught holding the fence, cage or ring rope material the referee will issue a one-point (1) deduction from the offending combatant's scorecard. ( )

**iii.** If a point deduction for holding the fence occurs, and the fouling combatant ends up in a superior position due to the foul, the combatants will be re-started, standing in a neutral position. ( )

**x.** Attacking During Break. Attacking an opponent on or during the break is illegal. A combatant will not engage an opponent in any manner during a time-out or break of action in competition. ( )

**y.** A combatant will not engage an opponent in any manner while the opponent is under the care or handling of the referee. ( )

**z.** Following Referee's Instructions. A combatant must follow the instructions of the referee at all times. Any deviation or non-compliance may result in the combatant's disqualification. ( )

**aa.** Timidity. Timidity is defined as any action by a combatant that is used to avoid contact with his opponent or to run away from the action of the fight. Timidity, includes, without limitation, intentionally avoiding contact with an opponent or consistently dropping the mouthpiece or faking an injury. The referee may also call timidity on a combatant for attempting to receive time by falsely claiming a foul or injury, for purposely dropping or spitting out his mouthpiece, or for committing any other action designed to stall the contest. ( )

**bb.** Interference by the Corner. Interference by the corner is defined as any action or activity aimed at disrupting the contest or causing an unfair advantage to a combatant. Corners are not allowed to distract the referee or influence the actions of the referee in any manner. ( )

**03.** Time Considerations for Fouls. ( )

**a.** A combatant who has been struck with a low blow is allowed up to five (5) minutes to recover from the foul and can continue on in the contest if allowed to by the ringside physician. ( )

**i.** If the combatant states that they can continue on before the five (5) minute time allotment has expired, then as soon as is practical the referee will restart the contest. ( )

**ii.** If the combatant goes over the five (5) minute time allotment, the contest cannot be restarted and must be stopped. The outcome is determined by the round and time in which the contest was stopped. ( )

**b.** If a combatant is fouled by a blow that the referee deems illegal, the referee must stop the action and call for time. The referee must take the injured combatant to the ringside physician and have the ringside physician examine the combatant to determine the combatant's ability to continue on in the contest. The ringside physician has up to five (5) minutes to make his determination. If the ringside physician determines that the combatant can continue on in the contest, then as soon as is practical the referee will restart the contest. Unlike the low blow foul, the combatant does not have the five (5) minute time allotment to use at his discretion. ( )

**c.** If the referee stops the contest and employs the use of the ringside physician, the ringside physician's examination must not exceed five (5) minutes. If five (5) minutes is exceeded, the contest cannot be re-started and must be stopped. ( )

**d.** If the ringside physician deems a combatant unfit to continue, the referee must immediately stop the contest. If the combatant is deemed unfit to continue by the ringside physician and part of the five (5) minute foul time is remaining, the combatant cannot use the remaining time. This will be enforced for all listed fouls, with the exception of a low blow foul. ( )

**04. Intentional Fouling.** ( )

**a.** Intentional Fouling Causing Injury. When a contest is interrupted due to an injury caused by an intentional foul, the referee, in consultation with the ringside physician, will determine whether the intentionally fouled combatant can continue or not. If it is determined that a combatant has been accidentally fouled and the combatant's chance of winning has not been seriously jeopardized as a result of the foul, the referee may order the contest continued after a reasonable interval. A combatant who is fouled with a low blow has up to five (5) minutes to recover. ( )

**b.** Combatant Unable to Continue Contest. If the injured combatant is unable to continue, the offending combatant will be disqualified and may be subject to discipline. Disposition of the penalty to be imposed upon the combatant will be determined by action of the Commission or the Commission's representative. ( )

**c.** Technical Decisions. If the referee or the ringside physician, or both, determine that the contest may continue after an injury resulting from an intentional foul and the injury inflicted by the intentional foul later becomes aggravated by fair blows, a technical decision will be rendered. If the technical decision rule is applied and the contest goes to the scorecards: ( )

**i.** If after the second or third round the fouled combatant is ahead on the scorecards, the fouled combatant wins by "Technical Decision." ( )

**ii.** If after the second or third round the fouled combatant is even or behind on the scorecards, the result is a "Technical Draw." ( )

**05. Accidental Fouling.** ( )

**a.** Accidental Fouling Causing Injury. When a contest is interrupted due to an injury caused by an accidental foul, the referee, in consultation with the ringside physician, will determine whether the combatant who has been fouled can continue or not. If it is determined that a combatant has been accidentally fouled and the combatant's chance of winning has not been seriously jeopardized as a result of a foul, the referee may order the contest continued after a reasonable interval. A combatant who is fouled with a low blow has up to five (5) minutes to recover. ( )

**b.** Combatant Unable to Continue Contest. If the referee or the ringside physician, or both, determine that the contest may not continue because of an injury suffered as the result of an accidental foul or because of an injury inflicted by an accidental foul which later becomes aggravated by fair blows, a Technical Decision will be rendered. ( )

**c.** Technical Decision. If the Technical Decision rule is applied and the contest goes to the scorecards, then: ( )

**i.** After the second or third round the combatant who is ahead on the scorecards wins by "Technical Decision"; or ( )

**ii.** After the second or third round ends, it is a "No Decision." ( )

**06. Fouls or Unsportsmanlike Conduct During the One Minute Rest Period in MMA Contest.** ( )

**a.** If a combatant fouls or acts in an unsportsmanlike manner during the one (1) minute rest period, the referee will deduct points from the offending combatant based on the severity of the offense. ( )

b. The Chief Second is responsible for all corner activities. Any illegal activity may cause the Chief Second to be immediately removed from the corner from the entire contest. ( )

**07. Concussive Head Impact Fouls in MMA Contest.** Before allowing a contest to continue, the referee should consult with the ringside physician in all cases involving concussive head fouls. The referee, in conjunction with the ringside physician, will determine the length of time needed to evaluate the affected combatant's suitability to continue. ( )

a. Intentional Fouls to the Head in MMA Contest. If the referee determines that a foul to the head was intentional, he must follow the Intentional Foul rule. The referee must consider that allowing the contest to continue may subject the combatant to a severe injury. ( )

i. If the affected combatant is not badly injured and his chance of winning has not been seriously jeopardized because of the foul, the contest may be allowed to continue. If the contest is allowed to continue, the offending combatant will be issued an official warning and have one (1) point deducted from his score in the round. ( )

ii. If the referee determines that the affected combatant cannot continue, the offending combatant will lose by "Disqualification." ( )

b. Accidental Fouls to the Head in MMA Contest. If the referee determines that a foul to the head was accidental, he will follow the Accidental Foul rule. The referee must consider that allowing the contest to continue may subject a combatant to a severe injury. ( )

i. If the affected combatant is not badly injured and his chance of winning has not been seriously jeopardized because of the foul, the contest may be allowed to continue. ( )

ii. If the contest cannot continue the Technical Decision rule will be applied. ( )

**08. Low Blow in MMA Contest.** ( )

a. Intentional. If the referee determines that the low blow foul was intentional, he will follow the Intentional Foul rule. ( )

i. If the offended combatant is not badly injured and their chance of winning has not been seriously jeopardized because of the foul, the Five (5) Minute rule may be applied. ( )

ii. If the referee determines that the athlete cannot continue, the offending combatant will lose by "Disqualification." ( )

b. Accidental. In cases where a combatant is hit with an accidental low blow and claims injury, the referee, at his discretion, may apply the Five (5) Minute rule. If the injured combatant cannot resume fighting before the recovery period ends, the injured combatant will lose the contest by "No Contest." ( )

c. The Five (5) Minute Rule is only applicable to low blow fouls. ( )

**09. Disqualification.** A combatant will lose by "Disqualification" when he: ( )

a. Intentionally fouls and causes harm to his opponent; ( )

b. Continually refuses to follow the rules; or ( )

c. Continually disobeys the referee. ( )

**10. Referee Action on Fouls in MMA Contest.** ( )

a. The referee must inform the Commission Representative as soon as possible of the following:

- i. The type of foul; ( )
- ii. If the foul was accidental or intentional; ( )
- iii. If points will be deducted from the offending combatant; ( )
- iv. If the offending combatant will be disqualified; ( )
- v. If the Five (5) Minute rule will or will not be applied; ( )
- vi. If the contest will be delayed to evaluate a combatant; or ( )
- vii. If the contest will or will not continue. ( )

**b.** The referee must declare whether a blow is legal or a foul. If declared a foul, he must declare if it was Accidental or Intentional. Point deductions for fouls will be done at the time of the infraction. If an intentional foul causes injury and the injury is severe enough to immediately terminate the bout, the combatant causing the injury loses by "Disqualification." ( )

**c.** Point deductions for an intentional foul is mandatory. If an intentional foul causes an injury and the fouled combatant can continue, the referee at his discretion will deduct points from the offending combatant. ( )

**734. SUSPENSION OF MMA CONTEST FOR UNFORSEEN REASONS.**

**01. Unforeseen Reasons.** If a contest has to be suspended for any reason other than the actions of the combatants, the referee will have the clock stopped and attend to the issue. The referee, Commission or Commission's representative will decide the length of time allotted to address the issue. All reasonable efforts must be made to resume the contest as soon as possible. It is expected that the responsible party or parties make a true effort to resolve the issue. ( )

**02. Suspicious Circumstances.** If the contest is unexpectedly stopped under suspicious circumstances, all or part of the following actions may take place: ( )

- a.** If a combatant or his corner is involved, the offending combatant may be disqualified. ( )
- b.** The combatant may be subject to investigation and discipline in the event of a violation of these rules. ( )
- c.** In certain circumstances the matter may be referred to the appropriate law enforcement agency or the courts, or both. ( )

**735. STANDING EIGHT COUNT IN MMA CONTEST.**

No standing eight (8) count is permitted under any circumstances. Referee's are responsible for combatant safety and must stop a contest when a combatant is unable to intelligently defend himself, or is unresponsive, timid, or mismatched in competition, or when the referee feels the combatant's safety is jeopardized. ( )

**736. WEIGHT CATEGORIES - MIXED MARTIAL ARTS.**

Commissions may use their discretion to approve certain matches out-of-weight class contests. The following comprises the full list of useable weight categories in any MMA contest.

<b>MEN'S DIVISIONS:</b>	
Featherweight	Up to 135 lbs.
Lightweight	135.1 to 155 lbs.



<b><u>MEN'S DIVISIONS:</u></b>	
<u>Welterweight</u>	<u>155.1 to 170 lbs.</u>
<u>Middleweight</u>	<u>170.1 to 185 lbs.</u>
<u>Light Heavyweight</u>	<u>185.1 to 205 lbs.</u>
<u>Heavyweight</u>	<u>205.1 to 265 lbs.</u>
<u>Super Heavyweight</u>	<u>265.1 lbs. and above</u>

<b><u>WOMEN'S DIVISIONS:</u></b>	
<u>Flyweight</u>	<u>95 lbs. and below</u>
<u>Featherweight</u>	<u>95.1 to 115 lbs.</u>
<u>Lightweight</u>	<u>115.1 to 125 lbs.</u>
<u>Welterweight</u>	<u>125.1 to 135 lbs.</u>
<u>Middleweight</u>	<u>135.1 to 145 lbs.</u>
<u>Light Heavyweight</u>	<u>145.1 to 155 lbs.</u>
<u>Cruiserweight</u>	<u>155.1 to 165 lbs.</u>
<u>Heavyweight</u>	<u>165.1 to 185 lbs.</u>
<u>Super Heavyweight</u>	<u>185.1 and above</u>

( )

**737. MMA EVENT ROUNDS.**

**01. Length of Rounds.** All rounds are five (5) minutes in length.

( )

**02. Number of Rounds.** Non-title contests consists of three (3) rounds. Title contests consist of five (5) rounds.

( )

**738. METHODS OF WINNING MMA CONTEST.**

**01. Knockout (KO).** A knockout is declared when a combatant is unable to intelligently defend himself following a strike.

( )

**02. Technical Knockout (TKO).** A technical knockout is declared when the licensed ringside physician or referee decides the combatant cannot continue due to a cut or other injury.

( )

**03. Submission.** When a combatant submits by tapping out on the opponent or the mat as a result from a choke, lock, or any other legal technique or strike. A combatant may call out defeat when unable to tap out.

( )

**04. Referee Stoppage.** The referee may stop the contest if a combatant can no longer defend himself or cannot or will not tap out, or for any other reason to preserve the health and safety of the combatants.

( )

**05. Decision.** When the contest ends after the specified time period and there is no winner, or ends due to a foul or fouls that cause injury, or ends due to unforeseen circumstance, it will be scored by the three (3) judges.

( )

**a.** Decisions made via a scorecard in MMA contest will be:

( )

- i. A “Unanimous Decision” in which all three (3) judges agree on winner. ( )
- ii. A “Split Decision” in which two (2) judges agree on one (1) combatant and one (1) judge scores for the other combatant. ( )
- iii. A “Majority Decision” in which two (2) judges agree on one (1) combatant and one (1) judge scores a draw. ( )
- b. A “Draw” may be: ( )
  - i. A “Unanimous” decision in which all three (3) judges score the contest a draw; ( )
  - ii. A “Majority” decision in which two (2) judges score the contest a draw and one (1) judge scores for a combatant; or ( )
  - iii. A “Split” decision in which one (1) judge scores for a combatant, one (1) judge scores for the other combatant and one (1) judge scores the contest a draw. ( )
- c. Other scorecard decisions are: ( )
  - i. Technical Decision; ( )
  - ii. Technical Draw; or ( )
  - iii. No Contest. ( )
- d. A “Disqualification” can result from fouling or unsportsmanlike conduct as determined by the referee. ( )

**06. Inability of Opponent to Continue or Throws in Towel:** If the opponent is unable or unwilling to continue the contest or the combatant’s corner decides that the combatant is unable to continue and indicates this by throwing the towel into the ring or cage, a TKO will result against this combatant. ( )

**739. MMA CONTEST SCORING.**

**01. 10 Points Must System.** All contests will be evaluated and scored by three (3) judges. In exigent circumstances, or at the discretion of the Commission, a referee may be allowed to judge a contest. The 10 Points Must System will be the standard system of scoring a contest. In the event that a contest ends by technical decision, the judges will score the partial round. ( )

**02. Method of Judging.** ( )

**a. Scoring by Judges.** Each judge will score every contest and will determine the winner using the following scoring system: ( )

- i. The better combatant of a round receives ten (10) points and his opponent proportionately fewer points. ( )
- ii. If the round is even, each combatant receives ten (10) points. ( )
- iii. No point fractions may be given. ( )
- iv. Points for each round must be awarded immediately after the end of the round. ( )

**b. Majority Opinion.** After the end of the contest the announcer will pick up the scores of the judges from the Commission’s desk. The majority opinion is conclusive. If there is no majority decision, the contest is declared a technical draw. ( )

**c.** Announcing a Winner. When the Commission has checked the scores, the announcer will be informed of the decision, and the announcer will inform the audience of the decision over the available public address system. ( )

**03. Primary Scoring Considerations.** The following are primary scoring considerations for scoring an amateur MMA competition: ( )

**a.** Legal striking. Clean, effective strikes in the legal scoring zone - number and quality of legal scoring blows: ( )

**b.** Legal takedowns, throws or knockdowns; ( )

**c.** Near completed submission; ( )

**d.** Overall control and dominance; and ( )

**e.** Damage. ( )

**740. COMBATANT DOWN AFTER THE SOUND OF THE BELL.**

**01. End of Round.** The round ends when the bell sounds to end the round. ( )

**02. Combatant Down After Round Has Ended.** If during the round legal blows negatively affect a combatant and the combatant goes down after the bell has sounded ending the round, the referee will consider the round ended and the one-minute rest period started. The referee may then allow the combatant's corner to assist the downed combatant or he may summon the ringside physician to evaluate the combatant, or both. ( )

**741. BLOWS AT OR AFTER THE BELL IN MMA CONTEST.**

**01. Legal Blow.** A blow that strikes a combatant concurrent with the sounding of the bell is deemed to be a legal blow. ( )

**02. Illegal Blow.** A blow that strikes a combatant after the sounding of the bell is deemed to be a foul. The referee will determine if it was accidental or intentional foul. ( )

**742. TERMINATION OF A CONTEST DUE TO A FAIR BLOW IN MMA CONTEST.**

If an athlete sustains an injury from a fair blow and the injury is severe enough to immediately terminate the contest, the injured combatant will lose by "Technical Knockout (TKO)". ( )

**743. COMBAT PLATFORMS (RING/CAGE).**

All MMA contests will take place in either a cage or a ring that has been approved by the Commission. The cage or ring will be subject to inspection prior to each contest by the Commission, a Commission representative, or a referee. ( )

~~732~~744. -- 799. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**901. PREPARATIONS TO STOP HEMORRHAGING.**

The Commission will periodically review the preparations available to stop hemorrhaging. Only the preparations which are approved by the Commission may be used to stop hemorrhaging on the ring. Avetine and Thrombin are the only Commission approved preparations to stop hemorrhaging. (3-3-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**909. PENALTIES FOR CERTAIN VIOLATIONS; REVIEW BY COMMISSION.**

**01. Penalties General.** Except as otherwise provided in this chapter, the Commission may charge a penalty not to exceed twenty-five thousand dollars (\$25,000) ~~from a schedule of penalties approved by the Commission~~ for: (3-26-08)( )

**a.** Any violation of the provisions of these rules (IDAPA 03.01.01, "Rules of the Athletic Commission"); or (3-3-94)( )

**b.** Being late or failing to appear for a weigh-in or contest. (3-26-08)

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

# **IDAPA 06 - BOARD OF CORRECTION**

## **06.01.01 - RULES OF THE BOARD OF CORRECTION**

**DOCKET NO. 06-0101-0801**

### **NOTICE OF PROCLAMATION OF RULEMAKING**

**EFFECTIVE DATE:** The final effective date of this rule is October 31, 2008.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of Title 67, Chapter 52, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

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

The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

**010. Definitions** - Amendment is necessary to make the IDAPA rule definitions consistent with the standardized terms and definitions approved by the IDOC's Standards and Operating Procedure Review Committee (SOPRC), which are being used in revised policies and procedures.

**109. Literature Distribution** - Amendment is necessary to clarify that this section only pertains to non-department literature and to include division chiefs and facility heads as authorities for approving the posting of any non-department literature.

**116. Custody of Evidence** - As requested by Representative Luker in the 2008 Legislative Session, amendment is necessary to ensure that the Department also disposes of contraband pursuant to any laws that are applicable.

**134. Research Requests** - As requested by Representative Luker and Chairman Smith in the 2008 Legislative Session, amendment is necessary to make it clear that the Internal Review and Human Subject Review Board's are not affiliated with the Department or the Board.

**135. Executions** - Amendment is necessary to make Subsection 135.06, Witnesses to the Execution, consistent with standard operating procedure (SOP) 135.02.01.001, *Execution Procedures*.

**402. Correspondence with Inmates** - Amendment is necessary to make Subsection 402.01, Incoming Mail; Subsection 402.02, Legal Mail; Subsection 402.03, Confidential Mail; and Subsection 402.04, Prohibited Mail, consistent with SOP 402.02.01.001, "Mail Handling in Correctional Facilities."

**FEE SUMMARY:** There is no increase in fees imposed with this rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on general funds for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Program Coordinator, at (208) 658-2133.

DATED this 20th day of August, 2008.

Lorenzo Washington  
Policy Program Coordinator  
Idaho Department of Correction  
1299 N Orchard St Suite 110  
Boise, ID 83706  
Ph: (208)658-2133; Fax: (208)327-7404

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 06-0101-0801**

**010. DEFINITIONS.**

- 01. Archival Research.** Research requiring access to stored historical data, files, documentation, video or audio tapes, electronically sorted data, or written material. (11-5-99)
- 02. Attorney of Record.** An attorney appointed by a court or retained by an inmate in a legal action. (11-5-99)
- 03. Board.** The State Board of Correction. (11-5-99)
- 04. Case Management File.** An approved collection, ~~in either hand or electronic form,~~ of legal documents, reports, submissions, statements, and support materials used in making decisions about an inmate (offender), parolee, or probationer regarding classification, treatment, programming, management, and parole, or clemency. ~~(10-5-07)~~(10-31-08)
- 05. Chief.** The exempt employee in authority over a division of the Department. Chief is commonly referred to as the division chief. (10-5-07)
- 06. Commission of Pardons and Parole.** The decision-making body that has the authority to grant, revoke, reinstate, or refuse parole. The Commission of Pardons and Parole is commonly referred to as the Parole Commission. (10-5-07)
- 07. Contact Visiting.** Visiting where no physical partition, such as a window or wall, separates the visitor and the inmate. Physical touch may be allowed. (10-5-07)
- 08. Contraband.** Any thing, of any kind, that is prohibited by Board, Department, or facility rules, policies, directives, or standard operating procedures. Contraband also includes any thing, of any kind, that a facility head has not approved: (10-5-07)
- a.** For possession by an inmate; or (10-5-07)
- b.** To bring into a facility or onto Department property. (10-5-07)
- 09. Contractor.** A person who has entered into a contract with the Board or Department, or a contract with the State of Idaho administered by the Board or Department to provide any service. (11-5-99)
- 10. Department.** The State Department of Correction. (11-5-99)

11. **Department Property.** Real property owned, leased, operated, or managed by the Board or Department. (10-5-07)
12. **Directive.** A sequence of steps within a particular division to implement a procedure. (11-5-99)
13. **Director.** The director of the Department of Correction. (11-5-99)
14. **Division.** An operating unit of the Department. Department divisions are the divisions of Prisons, Community Corrections, Education and Treatment, and Management Services. (10-5-07)
15. **Execution.** The carrying out of a sentence of death. (11-5-99)
16. **Facility.** A building or residence, including the property and land where the building or residence is located, owned, leased, operated, or managed by the Board or Department. (10-5-07)
17. **Facility Head.** The person primarily responsible for overseeing, managing or operating a Department facility. (10-5-07)
18. **Field Memoranda.** Detailed guidelines to implement directives within a facility or a service unit of a division. (11-5-99)
19. **Health Authority.** The Department employee who is primarily responsible for overseeing or managing the Department's medical and mental health services. The health authority is commonly referred to as the *medical health services manager* director. (~~10-5-07~~)(10-31-08)
20. **Immediate Family -- Offender.** The immediate family of an inmate is: (10-5-07)
- a. The mother or father of the inmate, including step parent; (11-5-99)
- b. The brother or sister of the whole or half (1/2) blood or by adoption, or the stepbrother or stepsister of the inmate; (11-5-99)
- c. The wife or husband of the inmate, as proved by marriage license or other operation of law; (11-5-99)
- d. The natural child, adopted child or stepchild of the inmate; (11-5-99)
- e. The grandparents of blood relation to the inmate; or (11-5-99)
- f. The grandchildren of blood relation to the inmate. (11-5-99)
21. **Inmate.** An individual in the physical custody of the Board. (11-5-99)
- ~~22.~~ **Minor.** An individual less than eighteen (18) years old. (10-5-07)
- ~~23.~~ **Noncontact Visiting.** Visiting with an inmate where there are physical barriers between the visitor and the inmate and the inmate and visitor are not allowed to touch. Verbal communication is generally accomplished through telephones, speakers, or openings in the physical barrier designed to allow sound to pass. (10-5-07)
- ~~24.~~ **Non-Department Literature.** Notices, placards, banners, advertisements, and other writings not generated by the Department for Department distribution. (~~11-5-99~~)(10-31-08)
25. **Offender.** A person under the legal care, custody, supervision, or authority of the Board, including a person within or without the State pursuant to agreement with another state or contractor. (10-5-07)
26. **Parolee.** An offender who: (10-5-07)

- a. Is released from a facility by the paroling authority prior to the completion of his sentence; (10-5-07)
- b. Agrees to comply with certain conditions established by the paroling authority; and (10-5-07)
- c. Remains under the control of a probation and parole officer (PPO) for the established period of supervision. (~~10-5-07~~)(10-31-08)
27. **Penological Interests.** The security, programmatic, and rehabilitative interests of the Board and the Department. (11-5-99)
28. **Person.** An individual, corporation, governmental entity or organization, however organized or constituted. (11-5-99)
29. **Photo Identification.** A state issued driver's license, a state issued identification card displaying a photograph, a military issued identification card displaying a photograph, or a current valid passport. (10-5-07)
30. **Post Order.** A detailed set of guidelines and procedures for each post or area of employee assignment which governs and explains the duties of the employee assigned to the post or area of responsibility. (11-5-99)
31. **Probationer.** An offender who the courts allow to continue to live and work in the community, instead of being sent to prison, while being supervised by a probation and parole officer (PPO) for an established period of time. (~~10-5-07~~)(10-31-08)
32. **Procedure.** A sequence of steps or actions to be followed to implement and support a rule or policy. (11-5-99)
33. **Public.** A person, of the general public, that does not include offenders, contractors, vendors, volunteers, interns, or the employees of the Board, Department, or the Commission of Pardons and Parole. (10-5-07)
34. **Public Information Officer.** An employee of the Department designated by the director to be the primary contact person from whom the public and media may request information. (11-5-99)
35. **Regular Volunteer.** Any approved person, not employed by the Idaho Department of Correction (IDOC), who is at least eighteen (18) years of age and, of his own free will, provides good or services, for no monetary or material gain, to a facility and/or any of its sections. This person must: (10-5-07)
- a. Completed an application; (10-5-07)
- b. Receive volunteer and facility orientation training; and (10-5-07)
- c. Be approved by a facility head or designee. (10-5-07)
36. **Student Intern Volunteer.** An approved college or university student who, as part of an academic program, offers his time or services to help enhance the mission, activities, and programs of the Department, which also helps further his professional development. Some student interns may receive compensation from the Department. (See also Regular Volunteer.) (10-5-07)
37. **Tobacco Products.** Cigarettes, whether packaged or hand rolled, cigars, snuff, chew, or any other variation of a product containing tobacco. (11-5-99)
38. **Vendor.** A person who supplies goods or services to the Board or any operation or facility under the authority of the Board. (11-5-99)
39. **Visiting Staff.** Employees of the Department or the Commission of Pardons and Parole conducting business in the Department central office building on a regular or irregular basis. (10-5-07)



- 40. Visitor.** A member of the public, as defined herein, who is approved to visit a Department facility. (10-5-07)
- 41. Volunteer.** An approved person who volunteers or donates time or services to the Board or a Department operation or facility. (10-5-07)
- 42. Work Site.** Any place where inmates may be found when assigned to a work project. (11-5-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**109. NON-DEPARTMENT LITERATURE DISTRIBUTION.**

No person shall post any non-department literature or notice on or in any Department property or facility without approval of the director, ~~or designee~~ chief, or facility head. (~~11-5-99~~)(10-31-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**116. CUSTODY OF EVIDENCE.**

**01. Evidence Retained.** Items of evidence retained by the Department for use in any proceeding concerning an offender shall be maintained in a safe and secure manner until completion of the proceedings, including appeal. A member of the public claiming an interest in an item of evidence may file a written request with the Department for its return. (11-5-99)

**02. Drugs Disposed Of.** Items of evidence in the form of narcotics or other usable drugs shall be given to a law enforcement agency for disposal. (11-5-99)

**03. Contraband Not Returned.** Items of evidence which are now contraband or were contraband at the time they came into the possession of the Department shall not be given to any claimant but may be disposed of according to the Department's standard operating procedures and applicable state and/or federal laws. (~~10-5-07~~)(10-31-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**134. RESEARCH REQUESTS.**

The Board may allow access to records, employees and offenders in the custody of the Board for purposes of appropriate and ethical research relevant to the Board's penological interests. (11-5-99)

**01. Archival Research.** Archival research which is based solely on data collection from an existing data base will be conducted according to Idaho public records laws. (11-5-99)

**02. Research Conducted on Offenders.** Research conducted on offenders may be conducted by professional researchers, including private consultants and Department employees, graduate students supervised by graduate level professionals, or undergraduate students supervised by Department staff undertaking research projects implemented and designed by Department administrators. (11-5-99)

**03. Required Documentation.** A written proposal, a copy of the school's Internal Review or Human Subject Review Board approval (if applicable), and a copy of the consent form will be required for all requests to conduct research with offenders. Required documentation will be initially submitted to the facility head, or designee,

of the site where research is to take place. Required documentation must be submitted ninety (90) days prior to the proposed research start date. (~~10-5-07~~)(10-31-08)

**a.** The written proposal will include a statement of the significance of the study, a research hypothesis or problem statement, an estimate of the time parameter for the project's completion, and a clear statement of the research methodology, a definition of the population, the sample selection, the design, ethical procedures, a discussion on dissemination of written research reports and legal parameters. (11-5-99)

**b.** The written proposal, copy of the Internal Review or Human Subject Review Board approval, and copy of the consent form will be reviewed by the facility head, or designee, of the site where the research is to take place. These documents will be reviewed for compatibility with Department goals, programs and needs for research. In addition, these documents may be rejected or returned for resubmission because there is a lack of compatibility with stated Board or Department goals, programs and needs for research, the research is inappropriate for conducting under the auspices of the Board or Department, or there is a failure to meet the required proposal criteria. (10-5-07)

**c.** Department employees conducting research at the request of the Department and professional researchers retained by the Department may be exempt from the requirement to submit a written research proposal. (11-5-99)

**d.** Department employees who wish to conduct research not requested by the Department must submit the required documentation noted in Subsection 134.03. (10-5-07)

**e.** Acceptable research proposals will be forwarded to the chief of the division where the research is to take place for final approval. Certain projects involving offenders should be approved with minimal review. Those projects include: (10-5-07)

i. Research conducted in a manner that does not link information gathered to the identity of the participants; (11-5-99)

ii. Research on regular and special instructional techniques; (11-5-99)

iii. Research involving the administration of standard tests, when information from the tests cannot be linked to the identities of the subjects; and (11-5-99)

iv. Research involving surveys or interview procedures where the responses cannot be identified back to the respondents. (11-5-99)

**04. Rights of Offenders.** The rights and welfare of any offender research subjects will be safeguarded at all times. (11-5-99)

**05. Use of Offenders in Medical Experimentation Prohibited.** The use or participation of offenders in medical, pharmaceutical or cosmetic experiments is expressly prohibited. (11-5-99)

**06. Written Report Required.** The principal researchers shall be required to provide the Department with a copy of the completed research results. (11-5-99)

**07. Termination of Project.** The director, any division chief, facility head, or designee may terminate approved research at any time for noncompliance with any rule, policy or procedure, directive, or condition previously agreed upon, or for cause generated by an emergency situation or at the discretion of the director. (10-5-07)

### **135. EXECUTIONS.**

**01. Personnel Assigned to Execution.** Idaho Maximum Security Institution personnel will carry out the execution warrant. The facility head of the Idaho Maximum Security Institution shall be the official executioner. (11-5-99)

**02. Method of Execution.** Execution of the sentence of death shall be by lethal injection. If the

director determines that a competent lethal injection team cannot be assembled, execution shall take place by firing squad. (11-5-99)

**03. Media Coordination.** Department personnel will coordinate media activity and provide logistics and communications support. A media center shall be established. The pre-execution briefing will be delivered in the media center. Media witnesses will be chosen pursuant to Department procedure. The selection of media witnesses will occur in the media center. The post-execution briefing will occur in the media center. (11-5-99)

**04. Public Information Officer to Handle Media Requests.** The director will designate a public information officer to deal with execution-related media requests and releases of information. (11-5-99)

**05. Parking and Demonstration Areas Provided.** Areas for public and media parking will be provided and maintained in a secure manner. Areas for public gathering and demonstration of support or opposition to the death penalty will be provided and maintained in a secure manner. (11-5-99)

**06. Witnesses to Individuals Present at the Execution.** ~~An area will be provided for the gathering of official witnesses and media witnesses immediately prior to the scheduled execution.~~ A total of twenty-one (21) occupants is the limit in the execution ~~viewing area~~ facility at one (1) time. Persons allowed in the execution viewing area ~~during the execution procedures~~ are: (11-5-99)(10-31-08)

**a.** ~~The injection team as identified by the facility head of the Idaho Maximum Security Institution~~ Idaho Department of Correction (IDOC) Staff; (11-5-99)(10-31-08)

**i.** The injection team as identified by the facility head of the Idaho Maximum Security Institution (IMSI); (10-31-08)

**ii.** The director; (10-31-08)

**iii.** A representative from the Idaho Board of Correction; (10-31-08)

**iv.** The chief of the Division of Prisons; and (10-31-08)

**v.** IMSI facility head; (10-31-08)

**b.** ~~The director, the chief of the Division of Prisons, and the facility head of the Idaho Maximum Security Institution~~ Witnesses; (10-5-07)(10-31-08)

**ei.** The coroner; (11-5-99)

**ēii.** The sheriff from the county of conviction; (11-5-99)

**eiii.** The prosecuting attorney from the county of conviction; (11-5-99)

**fiv.** A spiritual advisor of the inmate's choosing; (11-5-99)

**gy.** The sentencing judge; (11-5-99)

**hvi.** A representative from the Governor's office; (11-5-99)

**ivii.** The Attorney General or his representative; (11-5-99)

**jviii.** ~~A representative from the Board~~ A member of the victim's family; and (10-5-07)(10-31-08)

**ix.** A friend or member of the offender's family; and (10-31-08)

**kx.** ~~The~~ A maximum of four (4) news media pursuant to Subsection 135.03. A maximum of seven (7) news media may attend as witnesses. (11-5-99)(10-31-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. CORRESPONDENCE WITH INMATES.**

**01. Incoming Mail.** All incoming mail shall be opened and inspected to ensure it does not contain prohibited items as described in Section 402. Mail may be withheld subject to the provisions of Subsection 402.04 and 402.05. (10-5-07)

**a.** Books, magazines, ~~and~~ newspapers, and other publications may only be received directly from a legitimate publisher or other legitimate business source. Legitimacy of the source shall be in the sole discretion of the facility head or designee. (~~10-5-07~~)(10-31-08)

**b.** Any ~~cash~~, money order, or cashier's check enclosed will be credited to the inmate's trust account, except that money or other forms of exchange hidden or concealed in the correspondence shall be considered contraband and confiscated. Unapproved items of value not otherwise contraband must be returned to the sender at the inmate's expense within forty-five (45) days or they will be considered contraband and confiscated. (~~10-5-07~~)(10-31-08)

**02. Legal Mail.** Legal mail is confidential communication directly between an offender and an attorney (for the purposes of seeking or providing legal services only), an offender and the court, ~~and per court rules~~, opposing parties for service of documents ~~and~~ (pursuant to court rules), or sheriff offices for service of documents (pursuant to court rules). (~~10-5-07~~)(10-31-08)

**a.** To be recognized and treated as legal mail, correspondence from a legal source must be clearly marked "Legal Mail" and display the name, title and address of the sender. (10-5-07)

**b.** Mail that does not meet the requirements of Section 402 shall be treated as regular mail. (10-5-07)

**c.** Legal mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of Section 402, Department policies, or division standard operating procedures. (10-5-07)

**d.** Legal mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

**e.** Any sender of legal mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the division chief, have all incoming and outgoing mail treated as regular mail. (10-5-07)

**f.** Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

**03. Confidential Mail.** Confidential mail includes correspondence sent to or received from persons or entities such as the following: the President of the United States, the governor, the Idaho Legislature or U.S. Congress (except for bulk mailings), the Board, the director, IDOC chiefs and deputy chiefs, facility heads, public interest groups or government entities providing assistance for offenders, the Idaho Commission of Pardons and Parole or any member thereof, or the Consulate or Embassy of an offender who is a foreign national. (10-5-07)

~~**a.** To be recognized and treated as confidential, mail from a confidential source must be clearly marked "Confidential Mail" and display the name, title and address of the sender. (10-5-07)~~

**ba.** Mail that does not meet the requirements of Section 402 shall be treated as regular mail.

Confidential mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of this section, Department policies, or division standard operating procedures. (10-5-07)

**eb.** Confidential mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

**ec.** Any sender of confidential mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the facility head, be restricted or prohibited from sending mail to or receiving mail from any inmate. (10-5-07)

**ed.** Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

**04. Prohibited Mail.** Mail, including a publication, which poses a threat to the penological interests of the Board or Department, may be withheld from the inmate. Contraband will always be withheld without regard to this section. The Board has determined that some types of mail always pose a threat to penological interests. The following types of materials are prohibited: (10-5-07)

**a.** Items in a letter or package not authorized by policy or division standard operating procedures; (10-5-07)

**b.** Packages without prior authorization; (10-5-07)

**c.** Publications or items that describe the manufacture of weapons, bombs, explosives, alcohol and drugs, drug paraphernalia, or escape materials; (10-5-07)

**d.** Role-playing games and related materials; (10-31-08)

**de.** Information related to the crime or identity of another offender; (10-5-07)

**ef.** Promotional items such as fragrance packs, CDs, computer software, stickers, handbags, T-shirts, baseball caps, in publications, magazines, periodicals etc. (Promotional items will be destroyed and the publication will be forwarded so that the mail process is not delayed); (10-5-07)

**fg.** Fourth class mail/bulk mail Junk mail (mail that does not contain a typical Idaho Department of Correction [IDOC] offender mailing address [offender's name, IDOC number, facility, housing unit, etc.] and is similar to the following examples: direct marketing, mass mailings, sales flyers, credit card applications, coupons, etc.). Junk mail will be destroyed; (~~10-5-07~~)(10-31-08)

**gh.** More than one (1) subscription to the same periodical, magazine, etc.; (10-5-07)

**hi.** Publications or items evidencing gang involvement or activities (enemy lists, constitutions, structures, codes, signs, symbols, photographs, drawings, training material, clothing, etc.); (10-5-07)

**ij.** Publications or items advocating that any ethnic, racial, or religious group is inferior or that make such groups an object of ridicule and scorn. However, no publication will be withheld solely because of its appeal to a particular ethnic, racial, or religious group; (10-5-07)

**jk.** Publications or items that encourage violence between recipients and members of another group; (10-5-07)

**kl.** Publications not mailed direct from the publisher or a bookstore; (10-5-07)

**lm.** Clippings from magazines, books, or newspapers; (10-5-07)

**m.** Postage stamps or envelopes. (Postage stamps are allowed at CWC facilities if the CWC does not have commissary services); (10-5-07)

**n.** Greeting cards that are padded, laminated, musical, or larger than eight inches by ten inches (8" x 10"); (10-5-07)

**o.** Photographs larger than five inches by eight inches (5" x 8") and instant photographs, for example, "Polaroid type" with layers. Photocopies are not photographs and may be on standard eight and one-half inches by eleven inches (8.5" x 11") paper; and (10-5-07)

**p.** Other materials, which in the opinion of the facility head, present a threat to penological interests. (10-5-07)

**05. Prohibited Sexually Explicit and Pornographic Materials.** Nudity, sexually explicit, and pornographic materials are prohibited. Written material of a sexual nature is permitted and is not included in this definition. Publications that do not feature nudity, but contain nudity illustrative of medical, educational, or anthropological content may be excluded from this definition. (10-5-07)

**a.** Prohibited materials include pictorial depictions in books, pamphlets, magazines, periodicals, any other graphic images, or any other publication or any personal pictures, drawings, or any other graphic depiction, or photocopies of any of these items. (10-5-07)

**b.** Publications, drawings, photocopies, and other pictorial materials that meet the description of nudity in this section, but the person has clothing or other covering that is transparent or virtually transparent are not permitted. (10-5-07)

**i.** Nudity means a pictorial or graphic images depicting male or female genitalia, anus, or where the nipples or areola of female breasts are exposed; (10-5-07)

**ii.** Feature means that a publication contains pictorial depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues; and (10-5-07)

**iii.** Sexually explicit means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation. (10-5-07)

**06. Withholding of Prohibited Material.** Any incoming mail suspected of containing any prohibited material defined in this section shall be withheld and reviewed by the facility head or designee to determine if it should be withheld or delivered to the inmate. If the facility head determines that the mail should be withheld, the offender will be given written notice. The offender may use the Department grievance procedure to contest the decision. (10-5-07)

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.03 - RULES GOVERNING PERMIT FEE SCHEDULE**  
**DOCKET NO. 07-0203-0802 (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 54-2605(1) and 54-2606, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The proposed rulemaking is necessary to provide for a permit fee for the installation and inspection of gray water systems and reclaimed water systems. The proposed rulemaking provides that a permit is required for the installation of gray water systems and reclaimed water systems, along with the fee associated for each of the installations thereof, and the required inspection.

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

The permit fee for gray water systems will be \$130 and the permit fee for reclaimed water systems will be calculated at the same rate as industrial and commercial.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 22, 2008.

DATED this 19th day of August, 2008.

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0203-0801**

**011. FEE SCHEDULE.**

**01. New Residential - Single Family Dwelling.** Includes all buildings with plumbing systems being constructed on each property.

<b>New Residential - Single-Family Dwelling</b>	
Up to 1,500 Square feet of living space	- \$130
1,501 to 2,500 Square feet of living space	- \$195
2,501 to 3,500 Square feet of living space	- \$260
3,501 to 4,500 Square feet of living space	- \$325
Over 4,500 Square feet of living space	- \$325 plus \$65 for each additional 1,000 square feet or portion thereof

(7-1-08)T

**02. New Residential - Multi-Family Dwellings.**

<b>New Residential - Multi-Family Dwellings</b>	
Duplex Apartment	- \$260
Three (3) or more Multi-family Units	- \$130 per Building plus \$65 per Unit

(3-26-08)

**03. 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. (3-26-08)

**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. (3-26-08)

**a.** Plumbing system cost not exceeding ten thousand dollars (\$10,000): sixty dollars (\$60) plus two percent (2%) of the total plumbing system cost. (3-26-08)

**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). (3-26-08)

**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). (3-26-08)

**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. (3-26-08)

**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. (3-26-08)

**06. Additional Fees and Re-Inspection Fees.** A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply to: (3-26-08)

**a.** Trips to inspect when: (3-26-08)

**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 (3-26-08)

**ii.** If the submitter has not accurately identified the work location; or (3-26-08)

**iii.** If the inspector cannot gain access to make the inspection. (3-26-08)

**b.** Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. (3-26-08)

**c.** Each trip necessary to remove a red tag from the jobsite. (3-26-08)

**d.** When corrections have not been made in the prescribed time, unless an extension has been requested and granted. (3-26-08)

**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. (3-26-08)

**07. Plan Checking Fee.** Sixty-five dollars (\$65) per hour or portion thereof. (3-26-08)

**08. Mobile Homes.** Each connection or re-connection to existing sewer and water stubs shall be sixty-five dollars (\$65). (3-26-08)

**09. Mobile Home Parks and/or RV Parks.** Sewer and water service lines in mobile home parks and RV parks shall be classed as commercial. NOTE: This does not include or permit the connection of the mobile home. See Subsection 011.04, of these rules. (7-11-89)

**10. Residential.** Lawn sprinklers shall be sixty-five dollars (\$65). (3-26-08)

**11. Water Conditioners.** Water conditioners shall be sixty-five dollars (\$65). (3-26-08)

**12. 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 sixty-five dollars (\$65) for a combination of both if only one (1) inspection is required and the work is done by the same individual. (3-26-08)

**13. Non-residential.** Lawn sprinkler permit fees shall be calculated at the same rate as industrial and commercial plumbing installations. (3-26-08)

**14. 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 industrial and commercial plumbing installations. (3-26-08)

**15. Technical Service Fee.** Sixty-five dollars (\$65) per hour for each hour or portion thereof. (3-26-08)

**16. 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 (1)-family or two (2)-family residence shall be a minimum of sixty-five dollars (\$65) or four dollars (\$4) per fire sprinkler head, whichever is greater. (3-26-08)

**17. Gray Water Systems.** Gray water systems in residential occupancies shall be permitted at one hundred thirty dollars (\$130). ( )

**18. Reclaimed Water Systems.** Reclaimed water systems shall be calculated at the same rate as industrial and commercial installations in the same manner provided for in Subsection 011.04 of these rules. ( )

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING**

**DOCKET NO. 07-0205-0801**

**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 54-2606, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The proposed rulemaking is necessary to prevent the practice of unlicensed contractors advertising their services and holding themselves out to the public that they are available to perform plumbing contracting services. It also requires those licensed persons or entities that are permitted to advertise to include their license number in the advertisement. The proposed rulemaking prevents any person or entity from advertising to engage in the business or practice of a plumbing contractor without a valid plumbing certificate (license) issued by the Division of Building Safety. It also defines what activity constitutes advertising, and requires those persons or entities with a valid certificate who properly engage in advertising to include their certificate of competency number in the advertisement.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator – Operations, (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 22, 2008.

DATED this 11th day of August 2008.

Steve Keys, Deputy Administrator – Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0205-0801**

**013. PLUMBING CONTRACTOR.**

**01. Qualifications for Plumbing Contractor.** A plumbing contractor must be certified as competent by the Idaho Plumbing Board and the administrator of the Division before he offers his service to the public. To obtain the certificate, he must first submit an acceptable application. The application must show, among other things, a provable minimum of two and one-half (2 1/2) years experience as a journeyman plumber either in the state of Idaho or another state. Such experience may be proven by the submission with the application of a photostatic copy of the license from another jurisdiction, which has been held for the required period of time. However, if the applicant is from a state which does not require or provide for formal journeyman licensing, then said experience may be proven by the submission of three (3) sworn affidavits from individuals attesting to the fact that the applicant has had at least two and one-half (2 1/2) years experience as a journeyman plumber. Applications which are incomplete in any detail will be returned as unacceptable. A compliance bond must also be on file in the Division before an examination will be given. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and must accompany the application. (8-25-88)

**02. Restrictive Use of Contractor Certificate.** Any individual holding a contractor certificate and designated by a firm to represent that firm for licensing purposes shall represent one (1) firm only, and shall immediately notify the Division in writing when his working arrangement with that firm has been terminated for purposes of becoming self-employed or affiliation with another firm, or for any other reason. A license holder cannot represent any other person or firm, self-employed or otherwise, than originally stated on his application for license. When a change is made, he is required to so inform the Division. Otherwise, he is guilty of transferring his license in violation of Section 54-2610, Idaho Code, and is subject to license suspension, revocation, or refusal to renew under Section 54-2608, Idaho Code, or to prosecution under the provisions of Section 54-2628, Idaho Code. (8-25-88)

**03. Previous Revocation.** Any applicant for a plumbing contractor's license who has previously had his plumbing contractor's license revoked for cause, as provided by Section 54-2608, Idaho Code, shall be considered as unfit and unqualified to receive a new plumbing contractor's license so long as such cause for revocation is continuing, and of such a nature that correction can be made by the applicant. (11-14-85)

**04. Reviving an Expired License.** Any applicant for a plumbing contractor's license who has allowed his license to expire and seeks to revive it under the provisions of Section 54-2617, Idaho Code, may be denied a license as unfit and unqualified if, while operating under the license prior to expiration, he violated any of the laws, rules or regulations applicable to plumbing contractors, and such violation is continuing, and of such a nature that corrections can be made by the applicant. (11-14-85)

**05. Effective Dates.** The effective dates of the compliance bond referred to in Subsection 013.01 of these rules shall coincide with the effective dates of the contractor's license. Proof of renewal of the compliance bond must be on file with the Division before the contractor can renew or revive his license. (4-6-05)

**06. Plumbing Contractor's Responsibility.** It shall be the responsibility of the plumbing contractor to ensure that all his employees working at the plumbing trade are licensed as provided by Idaho Code and these rules. (8-25-88)

**07. Advertising.** Any person or entity advertising to engage in the business, trade, practice, or work of a plumbing contractor as defined in Section 54-2611, Idaho Code, who does not possess a current and valid plumbing contractor certificate of competency issued by the Division of Building Safety, shall be in violation of the licensing provisions of Title 54, Chapter 26, Idaho Code. Such conduct is punishable as a misdemeanor as prescribed by Section 54-2628, Idaho Code, and subject to civil penalties in accordance with IDAPA 07.02.07, "Rules Governing Civil Penalties." Section 011. ( )

**a.** For the purposes of this Section, advertising shall include, but not be limited to: newspaper, telephone directory, community flier ads or notices; telephone, television, radio, internet, or door-to-door solicitations. ( )

**b.** Any advertising, as defined in Subsection 013.07 of these rules, conducted by those persons or entities with a valid certificate of competency shall include the contractor certificate of competency number. ( )

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.03 - RULES FOR MODULAR BUILDINGS**

**DOCKET NO. 07-0303-0801**

### **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 39-4302, 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 15, 2008.

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:

Section 39-4306, Idaho Code, provides the Administrator authority to impose civil penalties on those who violate provisions of Chapter 43, Title 39, Idaho Code; however, no administrative rule exists that enumerates the types of actions that may subject manufacturers of modular buildings and others who may install such structures to civil penalties for such violations. The proposed rulemaking is necessary to enumerate the types of actions that may subject manufacturers of modular buildings in Idaho, and others who may install such structures in Idaho, to civil penalties for violations of Chapter 43, Title 39, Idaho Code.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 22, 2008.

DATED this 20th day of August 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0303-0801**

**033. CIVIL PENALTIES.**

The following acts shall subject the violator to penalties based on the following schedule. ( )

**01. Installation.** Any person who transports a modular building to or installs a modular building on a building site in this state without first receiving approval and securing to the structure insignia evidencing such approval from the Division shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and subject to a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**02. Modification.** Any person who in any way modifies or alters a modular building prior to its initial occupancy which has previously been approved by the Division without first having received approval to do so from the Division shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and subject to a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**03. Removal of Orders.** Any person who removes a stop work or prohibited occupancy order or notice from a building or structure bearing such order or notice shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and subject to a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**04. Lawful Orders.** Any person who shall fail, neglect, or refuse to obey any lawful order issued by the Administrator or his representative, or who shall refuse to perform any duty lawfully enjoined upon him by the Administrator or his representative, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and subject to a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**0334. -- 999. (RESERVED).**

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSE BOARD**  
**DOCKET NO. 07-0501-0802**  
**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 54-1907 and 67-2601A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amendments to Section 54-1904, Idaho Code, provided for a new Class Unlimited License resulting in the need to account for the Class Unlimited License in various sections of the rules. The proposed rule changes would establish the necessary financial requirements and documentation required for applications for Class Unlimited licenses, as well as an exemption to bid cost requirements for Class Unlimited licenses.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 22, 2008.

DATED this 20th day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0801**

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

**01. Application Documentation.** To obtain a license, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, a written, notarized application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: (3-20-04)

**a.** A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (3-20-04)

**b.** A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; (3-20-04)

**c.** A general description of applicant's machinery and equipment; and (3-30-07)

**d.** An annual financial statement, as herein defined, that was issued no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the Board may prescribe by rule. The applicant's financial statement may be supplemented with: (3-30-07)

**i.** Bonding. As authorized by Section 54-1910(e), Idaho Code, a letter from applicant's bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, including supporting documentation; (3-30-07)

**ii.** Guaranty. Documentation, satisfactory to the administrator, of the existence of a written guaranty agreement between the applicant and a third-party in which the third-party guarantor agrees to assume financial responsibility for payment of any obligations of the applicant for any particular project as may be determined by a court of competent jurisdiction. The guaranty agreement, along with financial statements meeting the requirements of Paragraph 110.01.e. of this rule, shall be submitted with the license application. (3-30-07)

**e.** For Class A, AA, ~~and~~ AAA and Unlimited license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For Class B license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For Class C and Class D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. (~~3-20-04~~)(\_\_\_\_)

**f.** The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee. (3-20-04)

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

**02. Application for Change in Licensing Class.** Requests for a licensing class higher than that for which the applicant is currently licensed shall be accompanied by the information in Subsection 110.01 of these rules, and the applicable fee. Licenses granted under Subsection 110.02 of these rules shall be valid for a period of twelve



(12) months from the date of issuance.

(4-11-06)

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

(3-20-04)

**04. Appraisals.** The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services.

(3-20-04)

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

(3-20-04)

**111. FINANCIAL REQUIREMENTS.**

The financial requirements for obtaining and maintaining a license under this Act shall be as follows: (4-11-06)

**01. Heavy, Highway, Building, and Specialty Construction Class Unlimited License.** An applicant requesting a Class Unlimited license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one million dollars (\$1,000,000) with six hundred thousand dollars (\$600,000) in working capital.

( )

**042. Heavy, Highway, Building, and Specialty Construction Class AAA License.** An applicant requesting a Class AAA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of six hundred thousand dollars (\$600,000) with two hundred thousand dollars (\$200,000) in working capital.

(3-19-99)

**023. Heavy, Highway, Building, and Specialty Construction Class AA License.** An applicant requesting a Class AA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of four hundred fifty thousand dollars (\$450,000) with one hundred fifty thousand dollars (\$150,000) in working capital.

(3-19-99)

**034. Heavy, Highway, Building, and Specialty Construction Class A License.** An applicant requesting a Class A license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of three hundred thousand dollars (\$300,000) with one hundred thousand dollars (\$100,000) in working capital.

(3-19-99)

**045. Heavy, Highway, Building, and Specialty Construction Class B License.** An applicant requesting a Class B license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one hundred fifty thousand dollars (\$150,000) with fifty thousand dollars (\$50,000) in working capital.

(3-19-99)

**056. Heavy, Highway, Building, and Specialty Construction Class C License.** An applicant requesting a Class C license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of twenty-five thousand dollars (\$25,000) with seven thousand five hundred dollars (\$7,500) in working capital.

(3-19-99)

**067. Heavy, Highway, Building, and Specialty Construction Class D License.** An applicant requesting a Class D license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ten thousand dollars (\$10,000) with three thousand dollars (\$3,000) in working capital.

(3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**199. LIMITATIONS.**

- 01. One License.** A licensee will be permitted to hold only one (1) class of license at any given time. (3-20-04)
- 02. Previous License Null and Void.** When a licensee of one class has been issued a license of another class, the previous license shall be null and void. (3-20-04)
- 03. Total Bid Cost.** The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class ~~AAA Unlimited~~, shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of the subcontractors. Subcontractor bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project. ~~(3-20-04)~~(\_\_\_\_)
- 04. Two or More Licensees.** Two (2) or more licensees of the same class or of different classes shall not be permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. (3-20-04)
- 05. Type 4 License Holder.** The holder of a license for Type 4, Specialty Construction, shall be entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. (3-20-04)

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

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

**DOCKET NO. 07-0701-0802**

#### **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 54-5005 and 54-5019, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The proposed rulemaking is necessary to eliminate unnecessary expense associated with multicolored inspection tags and allowing flexibility in the placement of the tags. The proposed rule change will allow for the use of a single sticker for multiple inspections, from multiple trades, and will remove the color limitation, eliminating unnecessary expense.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 22, 2008.

DATED this 11th day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0802**

**060. REQUIRED INSPECTIONS.**

All work performed under a HVAC permit shall be inspected by a designated, qualified, properly identified agent of the authority having jurisdiction to ensure compliance with Title 54, Chapter 50, Idaho Code, and IDAPA 07.07.01. (3-16-04)

**01. Request for Division of Building Safety Inspection. (3-16-04)**

**a.** Inspection. Each permit holder shall notify the Division at least one (1) day prior to the desired inspection, Sundays and holidays excluded, that the project is ready for inspection. (3-16-04)

**b.** Reinspection. If a reinspection is required after the final inspection, due to a failure to meet requirements of Title 54, Chapter 50, Idaho Code, and/or these rules, the permit holder will be charged a fee not to exceed the actual cost of each reinspection. (3-16-04)

**02. Inspection Tags.** Inspectors certify to the permit holder that an inspection has been done by securely attaching the ~~appropriate~~ inspection tag ~~to the equipment~~ in a prominent location. (~~3-16-04~~)(\_\_\_\_)

**a.** Final Inspection Tags. ~~Blue colored “final An inspection” tags are~~ indicating that a final inspection has been performed is attached when the HVAC installation as specified on the permit is complete and conforms to the requirements of the code and rules. (~~3-16-04~~)(\_\_\_\_)

**b.** Inspection Tags for Unacceptable HVAC Installations. Red colored “unacceptable” inspection tags are attached to indicate that the HVAC installation is not acceptable and that corrections are required. (3-16-04)

**c.** Work-in-Progress Tag. ~~Green colored “work in progress” An inspection tags are~~ indicating that a work-in-progress inspection has been performed is attached following inspection of ground work, rough-in work, or any portion of the installation that is to be covered or otherwise concealed before completion of the entire HVAC installation as specified on the permit. (~~3-16-04~~)(\_\_\_\_)

## **IDAPA 08 - STATE BOARD OF EDUCATION**

### **08.01.04 - RULES GOVERNING RESIDENCY CLASSIFICATION**

#### **DOCKET NO. 08-0104-0801**

### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105, 33-107, 33-2402, 33-2403, and 33-3717B, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The changes bring the rule into alignment with changes made to Section 33-3171B, Idaho Code during the 2008 legislative session, and clarify additional factors a student may use to establish residency for tuition purposes at an Idaho public postsecondary institution.

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

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking is non-controversial in nature. Informal meetings were conducted with registrars from Idaho's public postsecondary institutions.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tracie Bent  
Planning, Policy and HR Officer  
State Board of Education  
650 West State Street  
PO Box 83720-0037  
Boise, ID 83720-0037  
(208) 332-1582 phone  
(208) 334-2632 FAX

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0104-0801**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 33-3717B, Idaho Code.

~~(1-1-94)~~(8-1-08)T

**001. TITLE AND SCOPE.**

The title of this chapter is Residency. This chapter has the following scope: the four-year institutions under the supervision of the State Board of Education and the Regents of the University of Idaho, the University of Idaho, Boise State University, Idaho State University, and Lewis-Clark State College are required to make residency determinations pursuant to Section 33-3717B, Idaho Code, and these rules.

~~(1-1-94)~~(8-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. DEFINITIONS.**

**01. Resident Student.** Resident student is defined in Section 33-3717B, Idaho Code, and specifically includes:

~~(1-1-94)~~(8-1-08)T

**a.** Any student who has one (1) or more parent or parents or court appointed guardians who are domiciled in the state of Idaho for at least ~~one~~ twelve (12) year months prior to the opening day of the term for which the student matriculates, and the parent or parents or guardians provide at least fifty percent (50%) of the student's support.

~~(1-1-94)~~(8-1-08)T

**b.** Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians ~~who are not residents of Idaho for voting purposes and which student who~~ and maintained a bona fide domicile in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend ~~and who has in fact established a bona fide domicile in the state of Idaho~~ primarily for purposes other than educational.

~~(1-1-94)~~(8-1-08)T

**c.** Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation.

(1-1-94)

**d.** The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant.

(1-1-94)

**e.** A member of the armed forces of the United States stationed in the state on military orders.

(1-1-94)

**f.** An officer or an enlisted member of the Idaho national guard.

(8-1-08)T

**fg.** A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders.

(1-1-94)

**gh.** A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation.

(1-1-94)

**hi.** Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717B, Idaho Code, and who is away from the state for a period of less than ~~one~~ thirty (30) calendar-year months and has not established legal residence elsewhere, provided a twelve (12) month period of continuous residence has been established immediately prior to departure. ~~(1-1-94)~~(8-1-08)T

**i.** A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (8-1-08)T

- i.** Coeur d'Alene tribe; (8-1-08)T
- ii.** Shoshone-Paiute tribes; (8-1-08)T
- iii.** Nez Perce tribe; (8-1-08)T
- iv.** Shoshone-Bannock tribes; (8-1-08)T
- v.** Kootenai tribe. (8-1-08)T

**02. Nonresident Student.** Nonresident student is defined in Section 33-3717B, Idaho Code, and includes: ~~(1-1-94)~~(8-1-08)T

- a.** A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94)
- b.** A student attending an institution in this state with financial assistance provided by another state or governmental entity thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided. (1-1-94)

**c.** A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or who does not hold "refugee-parolee" or "conditional entrant" status with the United States Immigration and Naturalization Service, or is not otherwise permanently residing in the United States under color of law, and who does not also comply with and meet all applicable sections of Section 33-3717B, Idaho Code, and this chapter. ~~(1-1-94)~~(8-1-08)T

**03. Continuously Resided.** The term "continuously resided" as used in this chapter means physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions totaling not more than thirty (30) days during the twelve (12) month qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual. (1-1-94)

**04. Continuous Attendance.** For purposes of Subsection 005.01.f.g., "continuous attendance" means attendance at a college or university for continuing and succeeding semesters or terms excluding summer semesters or terms. ~~(1-1-94)~~(8-1-08)T

**05. Accredited Secondary School.** "Accredited secondary school" means an Idaho secondary school accredited by the State Board of Education. (1-1-94)

**06. Term Immediately Following Graduation.** For purposes of Subsection 005.01.c., "the term immediately following graduation" does not include the summer semester or term of a college or university. (1-1-94)

**07. Armed Forces.** "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, and United States Coast Guard. It does not include the National Guard or other reserve force. (3-30-01)

**08. Domicile.** "Domicile" means an individual's true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he

leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. (1-1-94)

**09. Support.** "Support" means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that he is not claimed as a dependent by a parent or guardian for income tax purposes or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc. (1-1-94)

**006. -- 099. (RESERVED).**

**100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.**

Any student classified as a resident for purposes of higher education by one institution must be considered a resident by all other institutions. "Institutions" means the University of Idaho, Idaho State University, Boise State University, ~~and~~ Lewis-Clark State College, and Eastern Idaho Technical College. (7-1-93)(8-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. FACTORS FOR DETERMINING DOMICILE.**

Pursuant to Section 33-3717B, Idaho Code, the overriding factor for determining whether a student is a "resident student" is domicile. For these purposes, the establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. In determining whether a student is domiciled in Idaho primarily for purposes other than educational, the institutions shall consider the following:

(1-1-94)(8-1-08)T

**01. ~~Registration and Payment of Idaho Taxes or Fees.~~ Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. Domicile Established.** Any of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (1-1-94)(8-1-08)T

**a.** Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student. (8-1-08)T

**b.** Permanent full-time employment or the hourly equivalent thereof in the state of Idaho. (8-1-08)T

**c.** Ownership by the student of the students living quarters. (8-1-08)T

**02. Rebuttable Presumption.** A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in the state unless the student proves, in fact, establishment of a bona fide domicile in the state primarily for purposes other than educational. A student who establishes at least five (5) of the seven (7) factors listed in Subsection 102.03 of these rules, if done for a least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational. (8-1-08)T

**03. Additional Factors to Determine Domiciliary Intent.** A student who establishes at least five (5) of the seven (7) following factors, if done for at least twelve (12) months before the term in which the student



proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (8-1-08)T

a. Registration and payment of Idaho taxes or fees. Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. (8-1-08)T

~~02. Filing of Idaho State Income Tax Returns.~~ (1-1-94)

~~03. Employment. Permanent full-time employment or the hourly equivalent thereof in the state of Idaho.~~ (1-1-94)

~~04d. Registration to vote. Registration to vote for state elected officials in Idaho at a general election.~~ (1-1-94)

~~05. Real Property Ownership in Idaho.~~ (1-1-94)

~~06c. Holding of an Idaho driver's license. An Idaho state-issued ID card may be used in lieu of an Idaho driver's license.~~ (1-1-94)(8-1-08)T

~~07d. Evidence of the abandonment of a previous domicile.~~ (1-1-94)

~~08e. The presence of household goods in Idaho.~~ (1-1-94)

~~09f. The establishment of accounts with Idaho financial institutions in Idaho.~~ (1-1-94)(8-1-08)T

~~104. **And Other Similar Factors Indicating Intent to Be Domiciled in Idaho and the Maintenance of Such Domicile.** Factors may include, but are not limited to, enrollment of dependent children in Idaho primary or secondary schools, establishment of acceptance of an offer of permanent employment for self in Idaho, or documented need to care for a relative in Idaho.~~ (1-1-94)(8-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. INTERPRETATIONS RELATING TO RESIDENCY CLASSIFICATION.**

**01. Common Law Marriage.** Any student who wants to establish residency on the basis of a common law marriage must complete an Affidavit of Common Law Marriage as approved by the Board. (7-1-93)

**02. Nonresident Aliens -- Marital Privilege.** Nonresident aliens who marry Idaho residents become eligible for residency classification for purposes of higher education, as provided in Section 33-3717B, Idaho Code, upon filing proof of marriage in the admissions office. However, the institutions remain responsible for complying with requirements set forth in regulations of the U.S. Immigration and Naturalization Service relating to non-immigrant alien students until such time as the alien is granted lawful resident alien status by the U.S. Immigration and Naturalization Service. (7-1-93)(8-1-08)T

**105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS.** As provided in Section 33-3717B, Idaho Code, a residency requirement of at least one (1) calendar year is in effect for certain special graduate and professional programs. Those programs include, but are not limited to, the WAMI Regional Medical Program, the WICHE Professional Student Exchange Program, the Idaho Dental Education Program, the Creighton Dental Education Program, the WOI Regional Veterinary Program, and the University of Utah Medical Program. For purposes of this section, the requirement of "at least one (1) calendar year" means a period of twelve (12) consecutive months of continuous residency consistent with the requirements of Section 33-3717B, Idaho Code, immediately prior to the date of application. (1-1-94)(8-1-08)T

**01. Delegation of Certification Administration.** The following office or institutions are delegated the responsibility for the evaluation of applicants and determination of residency for the special graduate and professional programs for purposes of certification. (7-1-93)

- a. The University of Idaho -- WAMI Regional Medical Program, WOI Regional Veterinary Program. (7-1-93)
- b. Idaho State University -- Idaho Dental Education Program and the University of Utah Medical Program. (6-30-95)
- c. Office of the State Board of Education -- WICHE Professional Student Exchange Program. (6-30-95)

**02. Appeal to the State Board of Education.** Applicants for the special graduate and professional programs, upon institutional denial of residency status, may petition the Board for a hearing on the denial. The decision to grant such a hearing is discretionary with the Board and will be granted for errors in determination of residency pursuant to Section 33-3717B, Idaho Code. (~~7-1-94~~)(8-1-08)T

# IDAPA 08 - BOARD OF AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0803

### 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 and Sections 33-1508 and 33-1511, Idaho Code and Sections 33-1201 and 33-1258, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 p.m.**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

1. The two documents that are being modified that are incorporated by reference in this rule are the Standards for Idaho School Buses and Operations (SISBO) and the Idaho Standards for the Initial Certification of Professional School Personnel.
2. The majority of the changes to the SISBO reflect revisions to the National Standards and include a structure for referencing paragraphs. The change in depreciation schedule would benefit a few rural school districts that have bus routes that are particularly long and rough. Buses on these routes have a shorter life span. The option to use a depreciation schedule based on mileage and type of use rates would allow a district with one of these routes to receive their reimbursement at a potentially faster rate that more closely matches the actual life span of the bus. These worn out buses are currently kept and left unused by the districts until the end of the traditional 12 year life expectancy; during this time the school must still pay for maintenance and inspect the bus every sixty days. The district is subject to financial penalty if the bus is sold or traded in before the end of the depreciation schedule.
3. Idaho Standards for the Initial Certification of Professional School Personnel are used for postsecondary programs in the preparation of these individuals. The change to the standards for school counselors clarifies that the Idaho Comprehensive School Counseling Program Mode is based on the American School Counselor Association national standards. Changes to the school psychologist standards more accurately reflect the school psychologist's role in a school both with students and with other school staff. Changes were also made to better reflect current professional terminology for school psychologists.

**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 Sections 67-5220(1) and (2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Vol. 08-7, page 27. For Idaho Standards for the Initial Certification of Professional School Personnel, pursuant to Section 67-5220(1), Idaho Code, 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.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ray Merial for the SISBO at (208) 332-6855 or Christina Linder for the Idaho Standards for the Initial Certification of Professional School Personnel at (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th Day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2<sup>nd</sup> Floor  
PO Box 83720, Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0803**

**004. INCORPORATION BY REFERENCE.**

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

**01. Incorporated Document.** The Idaho Standards for the Initial Certification of Professional School Personnel as approved in ~~April 2006~~ August 2008. (~~3-30-07~~)(\_\_\_\_)

**02. Document Availability.** The Standards are available at the Office of the State Board of Education, 650 W. State St., PO Box 83720, Boise, Idaho 83720-0037, and can also be accessed electronically at <http://www.idahoboardofed.org>. (3-16-04)

**03. Incorporated Document.** The Standards for Idaho School Buses and Operations as approved on ~~November 1, 2006~~ August 2008. (~~3-30-07~~)(\_\_\_\_)

**04. Document Availability.** The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov>. (~~7-1-02~~)(\_\_\_\_)

**05. Incorporated Document.** The Idaho Standards for Public School Driver Education and Training as approved on August 13, 2004. (4-6-05)

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

**07. Incorporated Document.** The Idaho Standards for Commercial Driving Schools as approved on March 10, 2005. (4-11-06)

**08. Document Availability.** The Idaho Standards for Commercial Driving Schools is available at the

Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702.

(3-14-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. TRANSPORTATION.**

Minimum School Bus Construction Standards. All new school bus chassis and bodies must meet or exceed Standards for Idaho School Buses and Operations as approved on ~~November 1, 2006~~ August 6, 2008, as authorized in Section 33-1511, Idaho Code. (~~3-30-07~~)(    )

**151. -- 159. (RESERVED).**

**160. MAINTENANCE STANDARDS AND INSPECTIONS.**

**01. Safety.** School buses will be maintained in a safe operating condition at all times. Certain equipment or parts of a school bus that are critical to its safe operation must be maintained at prescribed standards. When routine maintenance checks reveal any unsafe condition identified in the Standards for Idaho School Buses and Operations as approved on ~~November 1, 2006~~ August 6, 2008, the school district will eliminate the deficiency before returning the vehicle to service. (~~3-30-07~~)(    )

**02. Annual Inspection.** After completion of the annual school bus inspection, and if the school bus is approved for operation, an annual inspection sticker, indicating the year and month of inspection, will be placed in the lower, right-hand corner of the right side front windshield. The date indicated on the inspection sticker shall correlate to State Department of Education's annual school bus inspection certification report signed by pupil transportation maintenance personnel and countersigned by the district superintendent. (Section 33-1506, Idaho Code) (7-1-02)

**03. Sixty-Day Inspections.** At intervals of not more than sixty (60) calendar days, excluding documented out-of-use periods in excess of thirty (30) days, the board of trustees shall cause inspection to be made of each school bus operating under the authority of the board. Except that, no bus with a documented out-of-use period in excess of sixty (60) days shall be returned to service without first completing a documented sixty (60) day inspection. Annual inspections are considered dual purpose and also meet the sixty (60) day inspection requirement. (Section 33-1506, Idaho Code) (7-1-04)

**04. Documentation of Inspection.** All inspections will be documented in writing. Annual inspections must be documented in writing on the form provided by the State Department of Education. (4-1-97)

**05. Unsafe Vehicle.** When a bus has been removed from service during a State Department of Education inspection due to an unsafe condition, the district will notify the State Department of Education on the appropriate form before the bus can be returned to service. When a bus has been found to have deficiencies that are not life-threatening, it will be repaired within thirty (30) days and the State Department of Education notified on the appropriate form. If the deficiencies cannot be repaired within thirty (30) days, the bus must be removed from service until the deficiencies have been corrected or an extension granted. (7-1-02)

**06. Withdraw from Service Authority.** Subsequent to any federal, national, or state advisory with good cause given therefor, the district shall, under the direction of the State Department of Education, withdraw from service any bus determined to be deficient in any prescribed school bus construction standard intended to safeguard life or minimize injury. No bus withdrawn from service under the provisions of this section shall be returned to service or used to transport students unless the district submits to the State Department of Education a certification of compliance specific to the school bus construction standard in question. (Section 33-1506, Idaho Code) (7-1-04)

**161. -- 169. (RESERVED).**

**170. SCHOOL BUS DRIVERS AND VEHICLE OPERATION.**

All school districts and school bus drivers must meet or exceed the training, performance and operation requirements delineated in the Standards for Idaho School Buses and Operations as approved on ~~November 1, 2006~~ August 6,

2008. (Section 33-1508; 33-1509, Idaho Code)

~~(3-30-07)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**190. PROGRAM OPERATIONS.**

School district fiscal reporting requirements as well as reimbursable and non-reimbursable costs within the Pupil Transportation Support Program, including but not limited to administration, field and activity trips, safety busing, contracting for transportation services, leasing of district-owned buses, insurance, ineligible and non-public school students, ineligible vehicles, capital investments including the purchasing of school buses and equipment, program support and district waiver procedures shall be delineated in Standards for Idaho School Buses and Operations as approved on ~~November 1, 2006~~ August 6, 2008. (Section 33-1006, Idaho Code)

~~(3-30-07)~~(\_\_\_\_)

**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0804**

**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 and 33-107 Idaho Code, and Section 33-1280, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule change outlines procedures for native language certification through Tribal governments, State Department of Education Office of Indian Education and Office of Certification. Certification procedures are similar to standard teacher certification although approval must also be given by the Tribe(s) and SDE Indian Education Coordinator. Process includes fingerprinting and criminal history check.

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

Section 33-130, Idaho Code, requires a \$40 fee for a criminal history check (CHC) for all applicants for certification, school district employees, and anyone with unsupervised contact with students in the K-12 setting. The criminal history check and corresponding fee apply to applicants seeking certification to teach American Indian Languages.

**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 Sections 67-5220, Idaho Code, informal negotiated rulemaking was conducted. The rulemaking was initiated through meetings with members from Idaho's tribal governments.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mary Jane Oatman Wak-Wak (208) 332-6968.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0804**

**025. ~~NATIVE~~ AMERICAN INDIAN LANGUAGE (SECTION 33-1280, IDAHO CODE).**

Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language in accordance with Section 33-1280, Idaho Code. ~~Upon receiving the names of American Indian languages teachers designated by an Indian tribe, the State Department of Education shall authorize those individuals~~ Individuals identified by the tribe(s) may apply for an Idaho American Indian Certificate as American Indian languages teachers. (3-16-04)( )

**01. Process the Application.** The Office of Indian Education at the State Department of Education will process an application that has met the requirements of the Tribe(s) for an American Indian languages teacher. ( )

**02. Approval Has Been Received.** Once an application with Tribal approval has been received, it will be reviewed and, if approved, it will be forwarded to the Office of Certification for a criminal history background check as required in Section 33-130, Idaho Code. The application must include a ten finger fingerprint card or scan and a forty dollar (\$40) fee for undergoing a criminal history check pursuant to Section 33-130, Idaho Code. ( )

**03. Office of Certification.** The Office of Certification will review the application and verify the applicant is eligible for an Idaho American Indian Certificate. The State Department of Education shall authorize an eligible applicant as an American Indian languages teacher. An Idaho American Indian Certificate is valid for not more than five (5) years. Individuals may apply for a renewal certificate. ( )



**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0805**

**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 and 33-107, Idaho Code, and Sections 33-1201 and 33-1258, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changes to the requirements for a school counselor endorsement increase the percentage of time for the required field experience to be in the K-12 setting, and that the field experience is in all grade levels (elementary, middle/junior high and high school). The proposed change to the school psychologist endorsement increases the minimum number of hours for the required internship from 300 hours to 1,200 hours. The increase in hours more closely aligns Idaho's standards to most other states and reflects current research in the area of preparation for school psychologists. Most of Idaho's programs that prepare school psychologists already require more than the current minimum of three hundred hours.

**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 Sections 67-5220, Idaho Code, informal 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.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
Boise, ID 83720-0027  
(208) 332-6812; Fax (208) 334-2228

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0805

**027. PUPIL PERSONNEL SERVICES CERTIFICATE.**

Persons who serve as school counselors, school psychologists, speech-language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify. (3-16-04)

**01. Counselor Endorsement (K-12).** To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) ~~semester credits~~ hours are required every five (5) years in order to renew the endorsement. (~~3-16-04~~)(\_\_\_\_)

**a.** Hold a master's degree and provide verification of completion of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, ~~one-half seventy-five percent (75%)~~ of which must be in a K-12 school setting. Substantial amounts of this K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement. (~~3-16-04~~)(\_\_\_\_)

**b.** An institutional recommendation is required for a ~~School~~ Counselor K-12 Endorsement. (~~3-16-04~~)(\_\_\_\_)

**02. School Psychologist Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: (3-16-04)

**a.** Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program. (3-16-04)

**b.** Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology. (3-16-04)

**c.** Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum ~~three~~ twelve hundred (~~31,200~~) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (~~3-16-04~~)(\_\_\_\_)

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

completion of the following requirements. (3-16-04)

**a.** The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health-related field from an accredited institution. (11-2-07)T

**b.** The candidate must possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing and have completed nine (9) semester credit hours from a university or college in at least three (3) of the following areas: (11-2-07)T

i. Health program management; (11-2-07)T

ii. Child and adolescent health issues; (11-2-07)T

iii. Counseling, psychology, or social work; or (11-2-07)T

iv. Methods of instruction. (11-2-07)T

**c.** Additionally, each candidate must have two (2) years' full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (11-2-07)T

**04. Provisional Endorsement - School Nurse.** This certificate will be granted for those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. An Interim Certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (11-2-07)T

**05. Speech-Language Pathologist Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

**06. Audiology Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

**07. School Social Worker Endorsement.** This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options: (3-16-04)

**a.** A master's degree in social work from an Idaho college or university approved by the State Board of Education, or a master's degree in social work from an out-of-state college or university. The program must be currently approved by the state educational agency of the state in which the program was completed. (3-16-04)

**b.** A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas: understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. (3-16-04)

**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0806**

**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, and Sections 33-1201 and 33-1258, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These additional routes expedite the attainment of endorsements for teachers who are needed to teach in areas outside of their current endorsement. Under the alternative authorization provisions these additional routes would only be allowed for Idaho school districts who are requesting emergency endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification and is only valid for up to three years and is nonrenewable. These additional routes to endorsement under alternative authorization allow teachers to obtain additional endorsements through three options including traditional coursework through a college or university, National Board certification and through testing or assessment such as the Praxis II test. Those utilizing National Board certification and testing routes are required to complete a year of mentoring and supervision. Some pedagogy in content area best practices is required for those under the testing route.

**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 Sections 67-5220, Idaho Code, informal 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.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0806

**043. ALTERNATIVE AUTHORIZATION – TEACHER TO NEW CERTIFICATION (EFFECTIVE JULY 1, 2006).**

The purpose of this alternative authorization is to allow Idaho school districts to request emergency endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification. Alternative authorization in this area is valid for up to three (3) years and is nonrenewable.

(3-20-04)( )

**01. Initial Qualifications.** Prior to application, a candidate must hold a Bachelor's degree, and a valid Idaho teacher certificate without full endorsement in content area of need. The school district must declare an emergency and provide supportive information attesting to the ability of the candidate to fill the position. (3-20-04)

**02. Alternative Route Preparation Program.** (3-20-04)

**a. Option I – Teacher to New Certification/Endorsement.** ( )

**i.** Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. Candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (3-20-04)

**ii.** The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

**iii.** Candidate shall meet all requirements for the endorsement/certificate as provided herein. (3-20-04)

**b. Option II – National Board (endorsement only). By earning National Board certification in content specific areas teachers may gain endorsement in a corresponding subject area.** ( )

**c. Option III – Testing and/or Assessment (endorsement only). Two (2) pathways are available to some teachers, depending upon endorsement(s) already held.** ( )

**i.** Pathway 1 – Endorsements may be added through state-approved testing only, provided that the appropriate test is successfully completed within the first year of authorization in an area closely compatible with an endorsement for which they already qualify and are experienced. Additionally requires the successful completion of a one-year mentoring component. ( )

**ii.** Pathway 2 - Endorsements may be added through state-approved testing provided that the appropriate test is successfully completed within the first year of the authorization in an area closely compatible with an endorsement for which a teacher already qualifies and is experienced. Additionally requires the successful completion of a one (1)-year mentoring component and passing a final pedagogy assessment. ( )

**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0807**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105 and 33-107 Idaho Code, and 33-130 and 33-312, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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:

The 2008 Legislature passed a bill requiring student teachers and individuals who have unsupervised contact with students to have a criminal history check (CHC). The bill also provides for a statewide list of substitute teachers. The rule includes definitions and addresses the process of obtaining a criminal history check for applicants for certification, school district employees, substitute teachers, student teachers and individuals who have unsupervised contact with students in a K-12 setting.

**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:

The rule will help implement the legislated changes which became effective July 1, 2008 and clarify current procedures for criminal history checks on required persons in the K-12 school setting which now includes people with unsupervised contact with students and student teachers.

**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:

\$40 for undergoing a criminal history check (CHC). The CHC is based on a ten finger fingerprint card or scan sent to the Idaho State Police, Bureau of Criminal Identification (BCI) and the Federal Bureau of Investigations (FBI). The fee established in Section 33-130.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was conducted. Comments were solicited from parties involved in the criminal history check process including school administrators and human resources personnel.

**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 22, 2008.

DATED this 18th day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0807**

**067. -- 0754. (RESERVED).**

**075. FINGERPRINTING AND CRIMINAL HISTORY CHECKS (SECTIONS 33-130 AND 33-512, IDAHO CODE).**

All certificated and noncertificated employees and other individuals who are required by the provisions of section 33-130, Idaho Code must undergo a criminal history check. (8-20-08)T

**01. Definitions.** (8-20-08)T

**a. Applicant.** An individual applying for Idaho Certification or a certificated or non-certificated individual applying for employment. (8-20-08)T

**b. Break-in-Service.** A voluntary or involuntary termination in employment, including retirement. (8-20-08)T

**c. Candidate.** An individual attending a postsecondary program. (8-20-08)T

**d. Certificated Employee.** An individual who holds an Idaho education certificate and is employed in a certificated position in a LEA. (8-20-08)T

**e. Contractor.** An agency, company/business, or individual that has signed a contract or agreement to provide services to an LEA and private or parochial school. (8-20-08)T

**f. Conviction.** The final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, or the sentence has been suspended, deferred, or withheld on a felony or misdemeanor as defined by Section 18-110 and Section 18-111, Idaho Code. (8-20-08)T

**g. Criminal History Check (CHC).** A ten (10) finger fingerprint process to determine if an applicant has criminal arrests and convictions in Idaho, any other state, or applicable jurisdictions. (8-20-08)T

**h. Criminal History Check Result.** Information resulting from processing fingerprints through the databases maintained by the Bureau of Criminal Identification (BCI), Federal Bureau of Investigation (FBI) and the Idaho Statewide Sex Offender Registry. (8-20-08)T

- i.** Multiple Assignments. When an individual works in two or more LEAs or an LEA and private school simultaneously. (8-20-08)T
- j.** Non-Certificated Employee. An individual employed in a non-certificated position. (8-20-08)T
- k.** Open Date. The date a fingerprint card or scan is entered into the database as an electronic file. (8-20-08)T
- l.** Rejected Fingerprint Cards. A fingerprint card that has been returned by the BCI, FBI or SDE for poor quality prints, lack of signature, card being older than six (6) months, or other incomplete information. (8-20-08)T
- m.** Scan. The process of capturing an individual's fingerprints by an electronic process. (8-20-08)T
- n.** Unsupervised Contact. Direct contact or interaction with students not under the direct supervision of a school district employee on a continuing basis in a K-12 setting. This includes contact or interaction with students in scheduled school activities that occur outside of the school or outside of normal school hours. This excludes extra-curricular trips of one-day length starting during the school day. (8-20-08)T
- 02. Fee.** The state department of education shall charge a forty dollars (\$40.00) fee for undergoing a criminal history check. (8-20-08)T
- 03. Rejected Fingerprint Cards or Scans.** (8-20-08)T
- a.** When a fingerprint card has been rejected a new completed fingerprint card is required. (8-20-08)T
- b.** The rejected fingerprint card will be sent back to the originating LEA, private or parochial school, contractors, postsecondary program, or individual. (8-20-08)T
- c.** A new fingerprint card must be completed by a law enforcement agency to ensure legible fingerprints. Both the rejected fingerprint card and the new fingerprint card must be returned to the SDE within twenty (20) calendar days. (8-20-08)T
- d.** If the new fingerprint card and rejected fingerprint card are returned after the twenty (20) calendar day time period a forty dollar (\$40) fee is required to be paid. (8-20-08)T
- 04. Secured CHC Website.** The SDE will maintain a CHC website listing the CHC results. The LEA, private or parochial school, contractor or postsecondary program may view the results or status of an applicant, employee or candidate. (8-20-08)T
- a.** Upon a signed agreement the SDE will issue a password to access the CHC website. (8-20-08)T
- b.** Each LEA, private or parochial school, contractor and postsecondary program will have access to the CHC secure site listing their employees, statewide substitute teacher list, newly certified list and student teacher list. (8-20-08)T
- 05. Certificated Educators.** (8-20-08)T
- a.** The SDE will maintain a list of newly certificated educators. Educators stay on this list for one (1) year from their individual open date. Educators on this list may be employed by a LEA without a new CHC. (8-20-08)T
- b.** The SDE will make the final determination if an applicant is eligible for Idaho certification. (8-20-08)T



**c.** If the SDE makes a determination that the applicant is not eligible for Idaho certification, the SDE may deny the applicant Idaho certification. Upon receiving the written denial the applicant may request a hearing pursuant to section 33-1209, Idaho Code. (8-20-08)T

**06. Non-Certificated Employees.** Non-certificated employees are required to complete a CHC pursuant to section 33-130, Idaho Code. The CHC results will be posted on the CHC website for their employer to review. (8-20-08)T

**07. Substitute Teachers.** Substitute teachers as defined in section 33-512(15), Idaho Code must undergo a criminal history check. The State Department of Education shall maintain a statewide substitute teacher list. To remain on the list on the list a substitute teacher shall undergo a criminal history check every five (5) years in accordance with section 33-512, Idaho code. Substitute teachers on the list do not need to complete a multiple assignment form nor are subject to break in service provisions. (8-20-08)T

**08. Break In Service.** (8-20-08)T

**a.** When an employee returns to any LEA after a break in service a new criminal history check must be completed. (8-20-08)T

**b.** When an employee changes employment between LEAs a new CHC must be completed regardless of the most recent CHC. (8-20-08)T

**09. Postsecondary.** (8-20-08)T

**a.** The postsecondary program will submit a completed fingerprint card or scan for all candidates who are applying for student teaching, internships or practicum. (8-20-08)T

**b.** The SDE will make a preliminary determination based on the CHC result if the candidate is eligible for certification in Idaho. This decision will be forwarded to the postsecondary program concerning the eligibility of their candidate. (8-20-08)T

**c.** The SDE will move a candidate from the student teacher list to the newly certified list when an application for certification is approved. (8-20-08)T

**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0803**

**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 and 33-107, Idaho Code.

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

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The essential element of a State Longitudinal Data System is the ability to assign a unique student identifier to students. A unique statewide student identifier connects student data laterally across key databases as well as longitudinally from year to year. This relationship gives the state the capacity to match individual students' test records over time, identify trends in student movement, and measure postsecondary statistics in order to provide accurate enrollment and demographic data that ultimately allows decision makers to better meet the needs of all Idaho students. The unique student identifier is addressed in four administrative rules. The rules include definitions, submission of required information to assign a unique student identifier, and requires that effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) have a unique student identifier.

**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:

The 2008 legislature made an appropriation for the statewide longitudinal data system which includes the unique student identifier.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the lack of identifiable representatives of affected interests, and the determination that affected interests are not likely to reach a consensus.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rene Hughes (208) 332-6971.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th Day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0803**

**009. DEFINITIONS T - Z.**

**01. Tech Prep.** Tech Prep is a sequenced program of study that combines at least two (2) years of secondary and two (2) years of postsecondary education. It is designed to help students gain academic knowledge and technical skills, and often earn college credit for their secondary coursework. Programs are intended to lead to an associate's degree or a certificate in a specific career field, and ultimately, to high wage, high skill employment or advanced postsecondary training. (4-11-06)

**02. Technology Education.** A curriculum for elementary, middle, and senior high schools that integrates learning about technology (e.g., transportation, materials, communication, manufacturing, power and energy, and biotechnology) with problem-solving projects that require students to work in teams. Many technology education classrooms and laboratories are well equipped with computers, basic hand tools, simple robots, electronic devices, and other resources found in most communities today. (4-5-00)

**03. Total Quality Management.** A systematic approach to standardizing and increasing the efficiency of internal systems and processes, whether in a business or a school, using statistical and management tools for continuous improvement. Emphasis is on documenting effective processes, committing to meet customers' needs and sharing decision making. (3-15-02)

**04. Transferable Skills.** Skills that are inter-changeable among different jobs and workplaces. For example, the ability to handle cash is a skill one could use as both a restaurant cashier and a bank teller. The ability to problem solve or work as a team member is transferable among most jobs and workplaces. (4-11-06)

**05. 2+2 or 4+2.** A planned, streamlined sequence of academic and professional-technical courses which eliminates redundancies between high school and community college curricula; 2+2 is high school years eleven (11) and twelve (12) and community college years thirteen (13) and fourteen (14); 4+2 is high school years nine (9), ten (10), eleven (11), and twelve (12) and community college years thirteen (13) and fourteen (14). (4-11-06)

**06. Unique Student Identifier.** A number issued and assigned by the State Department of Education to each student currently enrolled or who will be enrolled in an Idaho local education agency to obtain data. ( )

**067. Writing Process.** The many aspects of the complex act of producing written communication; specifically, planning, drafting, revising, editing, and publishing. (4-5-00)

**078. Word Recognition.** (4-5-00)

**a.** The quick and easy identification of the form, pronunciation, and appropriate meaning of a word previously met in print or writing; (4-5-00)

**b.** The process of determining the pronunciation and some degree of meaning of a word in written or

printed form.

(4-5-00)

**(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. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

**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, the Idaho Standards Achievement Tests (ISAT), and the Idaho Alternate Assessment. (4-2-08)

**04. Testing Population.** All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. (4-2-08)

**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 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 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. (4-2-08)

**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. Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (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 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. (4-2-08)

**a.** Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**b.** Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**c.** Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**d.** Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**e.** Grade 4 - Direct Math Assessment, National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**f.** Grade 5 - Direct Writing Assessment, Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**g.** Grade 6 - Direct Math Assessment, Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**h.** Grade 7 - Direct Writing Assessment, Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**i.** Grade 8 - Direct Math Assessment, National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**j.** Grade 9 - Direct Writing Assessment, Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**k.** Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**l.** Grade 11 – Idaho English Language Assessment. (4-2-08)

- m.** Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-2-08)
- 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. (4-2-08)
- 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. (4-2-08)
- f.** The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)
- 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 security measures in protecting statewide assessment materials from compromise. 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. (4-2-08)

**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 Content Standards. (4-2-08)

**12. Demographic Information.** Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not 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). (4-2-08)

**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)

**(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 unique student identifier, 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. (4-2-08)(\_\_\_\_\_)

**116. UNIQUE STUDENT IDENTIFIER.**

Effective April 1, 2009, each student enrolled or enrolling in an Idaho school district or LEA will be assigned a unique student identifier. The unique student identifier shall follow the student from each school district or LEA or upon return to a school district or LEA after an absence from a school district or LEA no matter how long of absence has occurred. (\_\_\_\_\_)

**a.** School districts must obtain unique student identifiers by providing the following information to the State Department of Education for each student: ( )

**i.** First and last name as written on a legal document such as birth certificate, passport, visa, social security card, or other such legal document. ( )

**ii.** Date of birth. ( )

**iii.** Ethnicity. ( )

**iv.** Gender. ( )

**b.** School districts or LEAs may provide any or all of the following additional information to help ensure unique identification such as: ( )

**i.** Birth mother's first and last name. ( )

**ii.** Parents' or guardians' first and last name(s). ( )

**iii.** Social security number. ( )

**iv.** County of birth. ( )

**1167. -- 127. (RESERVED).**



**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0804**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 15, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105 and 33-110, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2006.

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

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

US Department of Education released non-regulatory guidance that stated first year limited English proficient (LEP) students are required to take the standard achievement test for not only math, but science as well, beginning in 2008, changes to the rule address this requirement. Additionally languages stating only the scores on the Spring ISAT for 10th grade students or later may be used to meet the graduation requirement of passing the 10th grade ISAT. Eliminating the word spring would allow scores on either the Fall or Spring 10th grade ISAT to be used for graduation purposes.

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

To be in compliance with amendments to governing law or federal programs, and confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non controversial nature of the changes, and the need to meet a Federal requirement.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tracie Bent  
Planning, Policy and HR Officer  
State Board of Education  
650 West State Street

PO Box 83720-0037  
Boise, ID 83720-0037  
(208) 332-1582 phone  
(208) 334-2632 FAX

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0804**

**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. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

- 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, the Idaho Standards Achievement Tests (ISAT), and the Idaho Alternate Assessment. (4-2-08)

**04. Testing Population.** All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. (4-2-08)

**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 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 the IELA in lieu of the reading/language usage ISAT, but will still be required to take the math and science 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. ~~(4-2-08)~~(8-15-08)T

**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 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. (4-2-08)

**a.** Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**b.** Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**c.** Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**d.** Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**e.** Grade 4 - Direct Math Assessment, National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**f.** Grade 5 - Direct Writing Assessment, Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**g.** Grade 6 - Direct Math Assessment, Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**h.** Grade 7 - Direct Writing Assessment, Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**i.** Grade 8 - Direct Math Assessment, National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**j.** Grade 9 - Direct Writing Assessment, Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**k.** Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

**l.** Grade 11 – Idaho English Language Assessment. (4-2-08)

**m.** Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-2-08)

**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. ~~(4-2-08)~~(8-15-08)T

**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. (4-2-08)

**f.** The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

**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 security measures in protecting statewide assessment materials from compromise. 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. (4-2-08)

**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 Content Standards. (4-2-08)

**12. Demographic Information.** Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not 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). (4-2-08)

**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)

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.01 - RULES OF PROCEDURE**

**DOCKET NO. 10-0101-0801**

**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 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 rules is to amend the Administrative Rules to:

1. Comply with updated terminology as incorporated in House Bill No. 380 passed by the 2008 session of the Idaho Legislature;
2. Include recognition of a Doctor of Philosophy degree as an exemption from the need to have an independent evaluation of engineering education obtained outside the United States;
3. Clarify that the Board will not ask another jurisdiction to proctor examinations; and
4. Clarify that an applicant who fails an examination a second or subsequent time must comply with the requirements contained in House Bill No. 380 passed by the 2008 session of the Idaho Legislature.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Sections 67-5220(1) and (2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Volume 08-7, Page 28.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyors  
5535 W. Overland Road, Boise, Idaho 83705  
Voice (208) 373-7210, Fax (208) 373-7213  
E-mail: dave.curtis@ipels.idaho.gov

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0101-0801**

**IDAPA 10 - IDAHO BOARD OF ~~REGISTRATION~~ LICENSURE OF PROFESSIONAL  
ENGINEERS AND PROFESSIONAL LAND SURVEYORS**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as the Idaho Board of ~~Registration~~ Licensure of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.01, "Rules of Procedure." (7-1-93)(\_\_\_\_)

**02. Scope.** These rules include procedures of the Board on matters relating to written interpretations, the office of the Board, filing of documents, rulemaking, contested cases, meetings, order of business, officers and committees, fees, reissuance of certificates, publications, seals, certificates, applications, examinations, reexaminations, ~~registrants~~ licensees or certificate holders of other states and boards, board quorum, right to publish disciplinary actions, requirements to be considered "exceptional" under Section 54-1223B(2), Idaho Code. Administrative appeals, public records act compliance, inclusive gender, and severability. (4-5-00)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. OFFICERS AND COMMITTEES.**

**01. Duties of Chairman.** The Chairman shall be the executive head of the Board and shall: preside at meetings; appoint committees; perform all duties pertaining to the office of the Chairman. (7-1-93)

**02. Duties of Vice Chairman.** The Vice Chairman shall, in the absence or incapacity of the Chairman, exercise the duties and possess all the powers of the Chairman. (7-1-93)

**03. Duties of Secretary.** The Secretary shall, with the assistance of the Executive Director and staff, and under the direction of the Board, perform the following functions and duties: (4-5-00)

- a.** Keep correct minutes of the Board; (7-1-93)
- b.** Furnish a copy of all minutes to each member of the Board; (7-1-93)
- c.** Send written notice of regular and special meetings of the Board to each Board member not less than ten (10) days in advance thereof, as well as provide appropriate public notice; (7-1-93)
- d.** Review each application for ~~registration~~ licensure or certification for essential data prior to consideration thereof by the Board; (7-1-93)(\_\_\_\_)
- e.** Verify qualifications, experience and character of the applicants; (7-1-93)
- f.** Make arrangements for examinations, interviews and hearings; (7-1-93)
- g.** Report to the Board members the results of every examination and other evidence of qualifications, with recommendations to the Board; (7-1-93)
- h.** Assist in the investigations of complaints and charges and arrange for hearings by the Board; (7-1-93)
- i.** Prepare and present the required annual report and roster as the Board may direct; (7-1-93)

**j.** Keep all records, including minutes, register of applicants for ~~registration~~ licensure and the roster of ~~registrants~~ licensees and certificate holders; (7-1-93)(\_\_\_\_)

**k.** Attend to all official correspondence of the Board; (7-1-93)

**l.** Perform all other duties prescribed by the Act as directed by the Board; and (7-1-93)

**m.** Otherwise perform all the duties normally pertaining to the Office of Secretary. (7-1-93)

**04. Duties and Qualifications of Executive Director.** The Executive Director of the Board of Licensure of Professional Engineers and Professional Land Surveyors shall: (4-5-00)(\_\_\_\_)

**a.** Not be a member of the Board. (7-1-93)

**b.** Be a ~~registered~~ licensed professional engineer or professional land surveyor in the state of Idaho and possess other qualifications required for members of the Board. (7-1-93)(\_\_\_\_)

**c.** Hold office at the pleasure of the Board. (7-1-93)

**d.** Receive such compensation as the Board may determine. (7-1-93)

**e.** Perform such other duties as may from time to time be assigned by the Board. (7-1-93)

**05. Surety Bond.** To comply with the requirements of Section 41-3502, Idaho Code, state officials and state employees are covered by blanket bond with the premium prorated to the several departments and agencies. The portion of cost prorated to the Board of Licensure of Professional Engineers and Professional Land Surveyors shall be paid from the "Professional Engineers and Land Surveyors" Fund. (7-1-93)(\_\_\_\_)

**06. Committees.** Regular and special committees of the Board shall perform the duties assigned to them and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. A special voluntary committee from the public, which may include members of the Board, may be formed to render special services as the Board may assign to them. (7-1-93)

**011. FEES.**

**01. Applications and Renewals.** All fees shall be set by the Board in the following categories and shall in no event be more than the amount specified in Sections 54-1213, 54-1214, 54-1216, 54-1219 and 54-1223, Idaho Code. Fees are not refundable. (4-5-00)

**a.** ~~Registration~~ Licensure as a professional engineer or professional land surveyor by examination. (7-1-93)(\_\_\_\_)

**b.** Certification as an engineer-~~in-training~~ intern or land surveyor-~~in-training~~ intern by examination. (7-1-93)(\_\_\_\_)

**c.** Certification for a business entity applying for a certificate of authorization to practice or offer to practice engineering or land surveying. (3-15-02)

**d.** Applications for reexamination in professional engineering, professional land surveying, engineer-~~in-training~~ intern or land surveyor-~~in-training~~ intern. (7-1-93)(\_\_\_\_)

**e.** Renewals for professional engineers, professional land surveyors, engineers-~~in-training~~ interns, land surveyors-~~in-training~~ interns and business entities. (3-15-02)(\_\_\_\_)

**f.** ~~Registration~~ Licensure for professional engineers or professional land surveyors by comity ~~registration~~. (7-1-93)(\_\_\_\_)



**02. Late or Denied Renewals.** Failure on the part of any ~~registrant~~ licensee or business entity to renew their fees prior to their expiration shall not deprive such persons or business entity of the right of renewal, but the fees to be paid for renewal after their expiration shall be increased as prescribed in Section 54-1216, Idaho Code.

(3-15-02)(\_\_\_\_)

**03. Reexaminations.** Separate fees will be assessed for each examination and such fees shall accompany all applications for examination for professional engineers, professional land surveyors, ~~engineers-in-training~~ interns, and land surveyors ~~in-training~~ interns.

(7-1-93)(\_\_\_\_)

**04. Schedule of Fees.** The schedule of fees as determined by the Board shall be furnished to applicants with application forms.

(7-1-93)

**012. REISSUANCE OF CERTIFICATES.**

A new certificate of ~~registration~~ licensure or authorization, to replace any certificate lost, destroyed or mutilated, may be issued upon written certification of the loss and payment of fee of ten dollars (\$10).

(7-1-93)(\_\_\_\_)

**013. PUBLICATIONS.**

**01. Annual Report.** An annual report shall be submitted to the governor, the contents of which shall comply with the provisions of Section 54-1210, Idaho Code.

(7-1-93)

**02. Roster.** A roster of professional engineers, professional land surveyors, ~~engineers-in-training~~ interns, land surveyors ~~in-training~~ interns, and engineering and land surveying business entities in good standing and ~~registrants~~ licensees and certificate holders in the retired status as provided in these rules shall be maintained in an electronic format available to the public.

(3-15-02)(\_\_\_\_)

**03. Retired Status.** Those ~~registrants~~ licensees who have reached the age of sixty (60) (or are totally and permanently disabled) and are retiring from practice may be listed in the retired section of the Roster, upon application to the Board. The biennial fee for being thus listed shall be established by the Board. Such listing does not permit a ~~registrant~~ licensee to engage in the practice of engineering or land surveying. The fee for reinstatement to active practice shall be as required for delayed renewals in Section 54-1216, Idaho Code.

(5-3-03)(\_\_\_\_)

**014. SEALS.**

**01. Official Seal of Board.** The official seal of this Board shall consist of the seal of the state of Idaho, surrounded with the words "Board of Professional Engineers and Professional Land Surveyors" and "State of Idaho."

(7-1-93)

**02. Standard Seals for Engineers and Land Surveyors.** The Board shall adopt standard seals for use by ~~registered~~ licensed professional engineers and professional land surveyors as prescribed by Section 54-1215, Idaho Code. Seals prepared and approved prior to July 1, 2008 are valid for continued use.

(7-1-93)(\_\_\_\_)

**03. Seal for Professional Engineer/Land Surveyor.** Engineers obtaining ~~registration~~ licensure as land surveyors under the changes to Section 54-1217, Idaho Code, by the 1978 Legislature shall use the seal showing ~~registration~~ licensure as a Professional Engineer and Land Surveyor as adopted by the Board. Seals prepared and approved prior to July 1, 2008 are valid for continued use.

(7-1-93)(\_\_\_\_)

**015. CERTIFICATES.**

Certificates of ~~registration~~ licensure or authorization issued by the Board shall be displayed in the place of business.

(7-1-93)(\_\_\_\_)

**016. APPLICATION FOR ~~REGISTRATION~~ LICENSURE OR CERTIFICATION.**

**01. Forms.** Application forms for ~~registration~~ licensure as a professional engineer, or professional land surveyor, certification as an ~~engineer-in-training~~ intern, land surveyor ~~in-training~~ intern or certificates of authorization to practice or offer to practice engineering or land surveying by a business entity may be obtained from the office of the Executive Director of the Board of Professional Engineers and Professional Land Surveyors.

(3-15-02)( )

**02. Completion of Application.** Applications shall be made on such forms as may be prescribed by the Board. An application which is not fully completed by the applicant need not be considered or acted upon by the Board. The application by a business entity for a certificate of authorization to practice or offer to practice engineering or land surveying must set forth their address, and name and address of the individual, or individuals, duly ~~registered~~ licensed to practice engineering or land surveying in this state, who will be in responsible charge of engineering or land surveying services offered or rendered by the business entity in this state. (3-15-02)( )

**03. Dates of Submittal.** Applications for the Spring and Fall examination, respectively, must be received by the Executive Director or postmarked by January 10 or August 1 of any year. In order for the Board to be able to verify experience, only experience up to the date of submittal of the application will be considered as valid. Experience anticipated between the date of the application submittal and the date of the examination or issuance of ~~registration license or certificate~~ will not be considered. For students, the application filing date for the Fundamentals of Engineering examination may be extended at the discretion of the Board. ~~Except for military personnel stationed in Idaho, only Idaho residents and students at Idaho universities will be assigned to examinations, unless otherwise approved by the Board.~~ (3-30-01)( )

**04. Residency Requirement.** ~~Except for military personnel stationed in Idaho, only Idaho residents and students at Idaho universities will be assigned to examinations, unless otherwise approved by the Board.~~ ( )

**045. Confidentiality of References.** All information received from references named by the applicant shall be held in confidence by the Board except as provided by Section 9-342, Idaho Code. Neither members of the Board nor relatives of the applicant by blood or marriage shall be named or accepted as references. (7-1-93)( )

**056. Minimum Standards -- References.** An applicant may not be admitted to the examination until satisfactory replies have been received from a minimum of five (5) of his references for professional engineers or land surveyors and three (3) references for engineers ~~in-training~~ interns and land surveyors ~~in-training~~ interns. It shall be the responsibility of each applicant to furnish their references with the forms prescribed by the Board. (3-30-01)( )

## **017. EXAMINATIONS.**

**01. Semiannually or Annually; Special or Oral Examination.** Examinations for licensure as a professional engineer; or professional land surveyor, or certification as an engineer-in-training intern and or land surveyor-in-training intern will be held annually or semi-annually, the exact time and place to be determined by the Board. Special oral or written examinations during the year may be given by the Board. (7-1-93)( )

**02. Eligibility for Examinations, Educational Requirements.** The application for ~~registration for~~ licensure as a professional engineer, professional land surveyor or certification of as an engineer-in-training intern or land surveyor-in-training intern, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before admittance to any examination. (7-1-93)( )

**a.** In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs which are accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). Non-EAC/ABET accredited engineering programs and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. (3-20-04)

**b.** An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and

other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer-~~in-Training~~ Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (~~3-20-04~~)(      )

i. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

c. Beginning July 1, 2010, an applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for assignment to the examination for certification as a Land Surveyor-~~in-Training~~ Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: (~~3-30-07~~)(      )

- i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)
- ii. Three (3) credits in Route Surveying; (3-30-07)
- iii. Three (3) credits in Public Land Surveying; (3-30-07)
- iv. Three (3) credits in Surveying Software Applications; (3-30-07)
- v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)
- vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)
- viii. Three (3) credits in Geodesy; and (3-30-07)
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

d. In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)

- i. Be a ~~registered~~ licensed professional engineer in Idaho. (~~7-1-93~~)(      )
- ii. Have two (2) years of work experience in the field of structural engineering after being ~~registered~~ licensed as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The examination shall be sixteen (16) hours. (~~7-1-93~~)(      )

e. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree or Doctor of Philosophy degree from an U.S. institution which has a bachelor degree program

accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology in the discipline of the applicant's master's degree or Doctor of Philosophy degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)( )

**03. Notification to Applicant by Board.** Notification of assignment or non-assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination. (4-5-00)

**04. Notification to Board by Applicant.** The applicant shall, at least fifteen (15) days before an examination, notify the Executive Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board. (4-5-00)

**05. Excused Non-Attendance at Exam.** In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

**06. Two Examinations for Engineering ~~Registration~~ Licensure.** The complete examining procedure for ~~registration~~ licensure as a professional engineer consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer-~~in-training~~ intern certification, and the second is the Principles and Practice of Engineering for professional engineer ~~registration~~ licensure. Each examination shall be eight (8) hours in length. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering ~~curriculum~~ program. A certificate as an Engineer-~~in-Training~~ Intern will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (4-22-94)( )

**07. Fundamentals of Engineering.** The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants' education. (4-5-00)( )

**08. Principles and Practice of Engineering -- Disciplines.** The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

**09. Two Examinations for Land Surveying ~~Registration~~ Licensure.** The complete examining procedure for ~~registration~~ licensure as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of ~~Land~~ Surveying examination for land surveyors-~~in-training~~ intern certification, and the second is the Principles and Practice of ~~Land~~ Surveying ~~registration~~ for professional land surveyor licensure. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of ~~Land~~ Surveying examination, applicants will be required to take the Principles and Practice of ~~Land~~ Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of ~~Land~~ Surveying examination may consist of separate modules, each of which must be passed. (4-5-00)( )

**10. Oral or Unassembled Examinations.** An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

**11. Special Examinations.** A special examination, written or oral or both, may be required in certain instances where the applicant is seeking ~~registration licensure~~ through comity or reciprocity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or ~~registration licensure~~ in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (7-1-93)(\_\_\_\_)

**12. Grading.** Each land surveyor-~~in-training intern~~, engineer-~~in-training intern~~ and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire eight (8) hour examination before being awarded certification or ~~registration licensure~~. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each section of the examination. (4-5-00)(\_\_\_\_)

**13. Use of NCEES Examinations.** Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineers-~~in-training intern~~, professional land surveyors, and land surveyors-~~in-training intern~~ may be used by the Board. The examination for the field of structural engineering shall be the sixteen (16) hour examination as determined by the Board. (7-1-93)(\_\_\_\_)

**14. Review of Examination by Examinee.** Due to security concerns about the examinations, examinees shall not be allowed to review their examination. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

**15. Disposal of Used Examination Pamphlets and Answer Sheets.** The Executive Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets after the first anniversary date after the examination was given. (3-30-01)

**16. Proctoring of Examinations.** Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-Specific examinations nor will they request another jurisdiction to proctor an examination for an Idaho applicant. (4-11-06)(\_\_\_\_)

**018. REEXAMINATIONS.**

**01. Allowing Reexamination upon Failure.** An applicant failing any portion of the Principles and Practice of ~~Land~~ Surveying examination, and having applied for reexamination as permitted by law, may at the discretion of the Board, be required to take only the portion of the examination for which a failing grade was received. (7-1-93)(\_\_\_\_)

**02. Application for Reexamination.** An applicant who has failed any examination, as previously described, may be assigned by the Board to reexamination upon written request and payment of fees at least sixty (60) days prior to any scheduled examination date. (7-1-93)

**03. Failure of Reexamination.** An applicant who fails on reexamination, must ~~appear before the Board or a member of the Board before being admitted to examination, and must present evidence satisfactory to the Board to warrant an additional examination as~~ present evidence of having met the requirements set forth in Section 54-1214, Idaho Code in order to be reassigned to an examination. (4-5-00)(\_\_\_\_)

**019. ~~REGISTRANTS LICENSEES~~ OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.**

**01. Interstate ~~Registration~~ Licensure Evaluation.** Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ABET programs

shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (~~3-20-04~~)(\_\_\_\_)

**a.** The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is ~~not~~ none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (~~4-5-00~~)(\_\_\_\_)

**b.** An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. (3-30-07)

**c.** An applicant who was originally licensed in another jurisdiction after June 30, 2010 who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: (3-30-07)

- i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)
- ii. Three (3) credits in Route Surveying; (3-30-07)
- iii. Three (3) credits in Public Land Surveying; (3-30-07)
- iv. Three (3) credits in Surveying Software Applications; (3-30-07)
- v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)
- vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)
- viii. Three (3) credits in Geodesy; and (3-30-07)
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

**02. Denials or Special Examinations.** An application from a ~~registrant~~ licensee of another state, territory or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. If the applicant is assigned to examination no additional fee shall be required. (~~7-1-93~~)(\_\_\_\_)

**03. Business Entity Requirements.** No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized

to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly ~~registered~~ licensed to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. ~~(3-15-02)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. REQUIREMENTS TO BE CONSIDERED “EXCEPTIONAL” UNDER SECTION 54-1223B(2), IDAHO CODE.**

**01. Waiver of the Fundamentals of Engineering Examination.** In order to be considered “exceptional” under Section 54-1223B(2), Idaho Code, an applicant for ~~registration~~ licensure as a professional engineer, either by examination or by comity, who seeks waiver of the fundamentals of engineering examination, must have a record of service and contributions beyond the ordinary in two (2) of the following three (3) areas: ~~(4-5-00)~~(\_\_\_\_)

- a. Professional or technical; (4-5-00)
- b. Business or industry; and (4-5-00)
- c. Community or cultural. (4-5-00)

**02. Activities Which the Board Believes are Exceptional.** Examples of activities which the Board believes are exceptional are: (4-5-00)

- a. Serving as an officer or committee chair; (4-5-00)
- b. Originating projects or initiatives; (4-5-00)
- c. Investing time or energy into the community; (4-5-00)
- d. Authoring significant publications; and (4-5-00)
- e. Receiving significant awards. (4-5-00)

**03. Activities Which the Board Believes Are Ordinary.** Examples of activities which the Board believes are only ordinary are: (4-5-00)

- a. Completing routine job assignments; (4-5-00)
- b. Holding membership in professional and technical societies; (4-5-00)
- c. Contributing money to causes; (4-5-00)
- d. Attending community events; and (4-5-00)
- e. Owning a business. (4-5-00)

**04. Written Request for Exceptional Designation.** An applicant who seeks waiver of the fundamentals of engineering examination shall submit a written request for the exceptional designation accompanied by two (2) written references supporting and explaining the applicants contributions that are beyond the ordinary. (4-5-00)

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY**

**DOCKET NO. 10-0102-0801**

**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 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 rules is to amend the Administrative Rules to:

1. Comply with updated terminology as incorporated in House Bill No. 380 passed by the 2008 session of the Idaho Legislature;
2. Remove an ambiguity relating to sealing of documents; and
3. Allow the Board to take disciplinary action if a licensee surrenders their license in another jurisdiction for reasons or causes which would constitute a violation of Idaho laws or rules.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Sections 67-5220(1) and (2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Volume 08-7, Page 29.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyor  
5535 W. Overland Road, Boise, Idaho 83705  
Voice (208) 373-7210, Fax (208) 373-7213  
E-mail: dave.curtis@ipels.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0102-0801**



**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as Idaho Board of Registration Licensure of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility."~~(7-1-93)~~(\_\_\_\_)

**02. Scope.** In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following Rules of Professional Responsibility, hereinafter referred to as Rules, have been promulgated in accordance with Section 54-1208, Idaho Code, and shall be binding in the state of Idaho upon every person holding a certificate of registration license as a Professional Engineer or Professional Land Surveyor, on all entities authorized to offer or perform engineering or land surveying services through a business entity or other legal entity and on every person holding a certificate as an engineer-in-training intern or a certificate as a land surveyor-in-training intern. Each Registrant Licensee and Certificate Holder under the laws of the state of Idaho is charged with being familiar with these Rules and knowledgeable in their application to the practice of engineering and land surveying. Such application shall include the recognition that the practice of engineering or the practice of land surveying is a privilege and the Registrant Licensee or Certificate Holder shall be forthright and candid in statements or written responses to the Board, or its representatives, on matters pertaining to these Rules. All Registrants Licensees or Certificate Holders in their original application, and for renewals thereof, shall certify that they have read and agree to abide by the Rules which are in force at the time of application or renewal. These Rules shall not be a basis for action involving civil liability, however, failure to obey these Rules may subject a Registrant Licensee or Certificate Holder to Board action pursuant to Chapter 12, Title 54, Idaho Code. ~~(3-15-02)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (7-1-93)

**01. Board.** The Board of Registration Licensure of Professional Engineers and Professional Land Surveyors. ~~(7-1-93)~~(\_\_\_\_)

**02. Certificate Holder.** Any person holding a current certificate as an Engineer-in-Training Intern or a Land Surveyor-in-Training Intern or a business entity (which is also herein referred to as a "person") holding a current certificate of authorization, which has been duly issued by the Board. ~~(3-15-02)~~(\_\_\_\_)

**03. Registrant Licensee.** Any person holding a current certificate of registration license as a Professional Engineer, a Professional Land Surveyor, or a combination thereof, which has been duly issued by the Board. ~~(7-1-98)~~(\_\_\_\_)

**04. Misconduct.** A violation or attempt to violate these rules of professional responsibility or to knowingly assist or induce another to do so, or do so through the acts of another; commission of a criminal act that reflects adversely on the registrant's licensee's or certificate holder's honesty, trustworthiness or fitness as a registrant licensee or certificate holder in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; state or imply an ability to influence improperly a government agency or official. ~~(7-1-98)~~(\_\_\_\_)

**005. RESPONSIBILITY TO THE PUBLIC.**

**01. Primary Obligation.** All Registrants Licensees and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties. ~~(7-1-93)~~(\_\_\_\_)

**02. Standard of Care.** Each Registrant Licensee and Certificate Holder shall perform in accordance with the standard of care for the profession and is under duty to the party for whom the service is to be performed to

exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances. (7-1-93)(\_\_\_\_)

**03. Professional Judgement.** If any *Registrant's Licensee's* or Certificate Holder's professional judgement is overruled under circumstances where the safety, health and welfare of the public are endangered, the *Registrant Licensee* or Certificate Holder shall inform the employer or client of the possible consequences and, where appropriate, notify the Board or such other authority of the situation. (7-1-93)(\_\_\_\_)

**04. Obligation to Communicate Discovery of Discrepancy.** If a *Registrant Licensee* or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another *Registrant Licensee* or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the *Registrant Licensee* or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The *Registrant Licensee* or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within sixty (60) calendar days to any question about his work raised by another *Registrant Licensee* or Certificate Holder. Failure to respond on the part of the *Registrant Licensee* or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the *Registrant Licensee* or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days. (3-30-01)(\_\_\_\_)

**05. Obligation to Comply with Rules of Continuing Professional Development.** All *Registrants licensed to practice professional land surveying Licensees* shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development." (7-1-99)(\_\_\_\_)

**06. Obligation to Communicate with Clients.** A *Registrant Licensee* shall be complete, objective and truthful in all communications with clients. (4-6-05)(\_\_\_\_)

**006. COMPETENCY FOR ASSIGNMENTS.**

**01. Assignments in Field of Competence.** A *Registrant Licensee* shall undertake to perform assignments only when qualified by education or experience in the specific technical field involved, however, a *Registrant Licensee*, as the prime professional, may accept an assignment requiring education or experience outside of his own field of competence, but his services are restricted to those phases of the project in which the *Registrant Licensee* is qualified. All other phases of such project shall be performed by qualified associates, consultants or employees. For projects encompassing one (1) or more disciplines beyond the *Registrant's Licensee's* competence, a *Registrant Licensee* may sign and seal ~~all documents~~ the cover sheet for the total project only when the *Registrant Licensee* has first determined that all elements of the project have been ~~performed prepared~~, signed and sealed by others ~~associates, consultants or employees~~ who are competent, licensed and qualified to perform such services ~~in other disciplines, and are registered or licensed.~~ (7-1-93)(\_\_\_\_)

**02. Aiding and Abetting an Unregistered Unlicensed Person.** A *Registrant Licensee* or Certificate Holder shall avoid actions and procedures which, in effect, amount to aiding and abetting an ~~unregistered unlicensed~~ person to practice engineering or land surveying. (7-1-93)(\_\_\_\_)

**03. Use of Seal on Documents.** A *Registrant Licensee* shall affix his signature and seal only to plans or documents prepared under his responsible charge. (7-1-93)(\_\_\_\_)

**007. PUBLIC STATEMENTS.**

**01. Complete, Objective and Truthful Reports, Statements or Testimony.** A *Registrant Licensee* shall be complete, objective and truthful in all professional reports, statements or testimony. He shall, to the best of his knowledge include all relevant and pertinent information in such reports, statements or testimony. (7-1-93)(\_\_\_\_)

**02. Opinions Based on Adequate Knowledge.** A *Registrant Licensee* or Certificate Holder, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the

subject matter, and upon honest conviction of the accuracy and propriety of his testimony. (7-1-93)(\_\_\_\_)

**03. Statements Regarding Public Policy.** On matters connected with establishing public policy a Registrant Licensee or Certificate Holder shall issue no statements, criticisms or arguments which are paid for by an interested party, or parties, unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the party, or parties, on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the matters. (7-1-93)(\_\_\_\_)

**04. Actions in Regard to Other Registrants or Certificate Holders.** A Registrant Licensee or Certificate Holder shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another Registrant Licensee or Certificate Holder, nor shall he indiscriminately criticize another Registrant's Licensee's or Certificate Holder's work in public. If he believes that another Registrant Licensee or Certificate Holder is guilty of fraud, deceit, negligence, incompetence, misconduct or violation of these rules he should present such information to the Board for action. (7-1-93)(\_\_\_\_)

**008. CONFLICT OF INTEREST.**

**01. Conflict of Interest to Be Avoided.** Each Registrant Licensee or Certificate Holder shall conscientiously avoid conflict of interest with an employer or client, and, when unavoidable, shall forthwith disclose the circumstances in writing to the employer or client. In addition, the Registrant Licensee or Certificate Holder shall promptly inform the employer or client in writing of any business association, interests, or circumstances which could influence a Registrant's Licensee's or Certificate Holder's judgement or quality of service, or jeopardize the clients' interests. (7-1-98)(\_\_\_\_)

**02. Compensations From Multiple Parties on the Same Project.** A Registrant Licensee or Certificate Holder may accept compensation, financial or otherwise, from more than one (1) party for services on the same project, or for services pertaining to the same project, provided the circumstances are fully disclosed, in writing, in advance and agreed to by all interested parties. (7-1-93)(\_\_\_\_)

**03. Solicitation From Material or Equipment Suppliers.** A Registrant Licensee or Certificate Holder shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying or recommending the products of said suppliers, except with full disclosure as outlined in Subsection 008.02. (7-1-93)(\_\_\_\_)

**04. Gratuities.** A Registrant Licensee or Certificate Holder shall not solicit or accept gratuities, gifts, travel, lodging, loans, entertainment or other favors directly or indirectly, from contractors, their agents or other third parties dealing with a client or employer in connection with work for which the Registrant Licensee or Certificate Holder is responsible, which can be construed to be an effort to improperly influence the Registrant's Licensee's or Certificate Holder's professional judgement. Minor expenditures such as advertising trinkets, novelties and meals are excluded. Neither shall a Registrant Licensee or Certificate Holder make any such improper offer. (7-1-93)(\_\_\_\_)

**05. Solicitation From Agencies.** A Registrant Licensee, a Certificate Holder or a representative thereof shall not solicit or accept a contract from a governmental authority on which an existing principal or officer of his organization serves as a member of the elected policy and governing body of such governmental authority or serves as a member of an entity of such governmental authority having the right to contract for the services of a Registrant Licensee or a Certificate Holder. (7-1-93)(\_\_\_\_)

**06. Professional Services Decisions of Agencies.** A Registrant Licensee, Certificate Holder or representative thereof serving as a member, advisor or consultant to a governmental board, commission or department shall not participate in decisions with respect to professional services to be offered, that have been offered or may have been performed by that person's associates, firm or employer for the concerned governmental body upon which that person serves, whether such professional services are commissioned by an entity of the said governmental body or by another person or entity. (7-1-93)(\_\_\_\_)

**07. Unfair Advantage of Position and Work Outside Regular Employment.** When a Registrant Licensee or an individual Certificate Holder is employed in a full time position, the person shall not use the advantages of the position to compete unfairly with other professionals and shall not accept professional employment

outside of that person's regular work or interest without the knowledge of and written permission or authorization from that person's employer. (7-1-98)(\_\_\_\_)

**009. SOLICITATION OF WORK.**

**01. Commissions.** A Registrant Licensee or Certificate Holder shall not pay or offer to pay, either directly or indirectly, any commission, gift or other valuable consideration in an effort to secure work, except to bona fide employees or bona fide established business enterprises retained by a Registrant Licensee or Certificate Holder for the purpose of securing business or employment. (7-1-93)(\_\_\_\_)

**02. Representation of Qualifications.** A Registrant Licensee or Certificate Holder shall not falsify or permit misrepresentation of his or his associates' academic or professional qualifications, and shall not misrepresent or exaggerate the degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-venturers or his or their past accomplishments with the intent and purpose of enhancing qualifications for the work. The Registrant Licensee or Certificate Holder shall not indulge in publicity that is misleading. (7-1-93)(\_\_\_\_)

**03. Assignment on Which Others Are Employed.** A Registrant Licensee or Certificate Holder shall not knowingly seek or accept employment for professional services for an assignment which another Registrant Licensee or Certificate Holder is employed, or contracted to perform without the currently employed or contracted entity being informed in writing. (7-1-98)(\_\_\_\_)

**04. Contingency Fee Contracts.** A Registrant Licensee or Certificate Holder shall not accept an agreement, contract, or commission for professional services on a "contingency basis" which may compromise his professional judgement and shall not accept an agreement, contract or commission for professional services which includes provisions wherein the payment of fee involved is contingent on a "favorable" conclusion, recommendation or judgement. (7-1-98)(\_\_\_\_)

**05. Selection on the Basis of Qualifications.** A Registrant Licensee or Certificate Holder should seek professional employment or professional service work on the basis of qualifications and competence for proper accomplishment of the work assignment. (7-1-93)(\_\_\_\_)

**010. IMPROPER CONDUCT.**

**01. Fraudulent or Dishonest Enterprises.** A Registrant Licensee or Certificate Holder shall not knowingly associate with, or permit the use of his name or the firm name in a business venture by any person or firm which it is known, or there is reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature. (7-1-93)(\_\_\_\_)

**02. Confidentiality.** Registrants Licensees or Certificate Holders shall not reveal confidential facts, data or information obtained in a professional capacity without prior written consent of the client or employer except as authorized or required by law. (7-1-98)(\_\_\_\_)

**03. Actions by Other Jurisdictions.** The surrender, revocation, suspension or denial of a license to practice Professional Engineering or Professional Land Surveying, as an individual or through a business entity, in another jurisdiction, for reasons or causes which the Board finds would constitute a violation of the Idaho laws regulating the practice of Engineering and Land Surveying, or any code or rules promulgated by the Board, shall be sufficient cause after a hearing for ~~the denial, suspension or revocation of a certificate of registration or certificate of authorization to practice engineering or land surveying in this state~~ disciplinary action as provided in Title 54 Chapter 12, Idaho Code. (3-15-02)(\_\_\_\_)

**011. RULE AND STATUTE VIOLATIONS.**

**01. Affidavits for Rule and Statute Violations.** Any person who believes that a Registrant Licensee or Certificate Holder by his actions, or failure to properly act, is guilty of fraud, deceit, negligence, incompetency, misconduct, or violation of these rules, or any applicable statute, may file a written affidavit with the Executive

Director of the Board which shall be sworn to or affirmed under penalty of perjury, signed and in which the alleged rule and statute violations shall be clearly set forth and that the applicable ~~Registrant~~ Licensee or Certificate Holder, or both, should be considered for the appropriate disciplinary action by the Board. Following the receipt of such affidavit, the Board ~~shall~~ may investigate, hold hearings and adjudicate the charges. Proceedings shall be exempt from all statutes of limitations. (5-3-03)(\_\_\_\_)

**02. Investigation of Statute or Rule Violations.** The Board may, at its own discretion, initiate investigation of alleged or possible statute or rule violations that have come to its attention. (5-3-03)

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.03 - RULES OF CORNER PERPETUATION AND FILING**

**DOCKET NO. 10-0103-0801**

**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 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 intended negotiated rulemaking is to amend the Administrative Rules to:

1. Comply with updated terminology as incorporated in House Bill No. 380 passed by the 2008 session of the Idaho Legislature;
2. Correct the address of the Board office; and
3. Clarify that the corner record must include a sketch of the marks on a found monument.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1) and (2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Volume 08-7, Page 30.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 373-7210. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyor  
5535 W. Overland Road, Boise, Idaho 83705  
Voice (208) 373-7210, Fax (208) 373-7213  
E-mail: dave.curtis@ipels.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0103-0801**

**000. LEGAL AUTHORITY.**

As required in Section 55-1606, Idaho Code, the Board of ~~Registration~~ Licensure of Professional Engineers and Professional Land Surveyors hereby establishes these rules for land survey corner perpetuation and filing.

(7-1-93)( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as Idaho Board of Registration Licensure of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.03, "Rules for Corner Perpetuation and Filing."  
(7-1-93)( )

**02. Scope.** These rules include criteria for properly completing corner perpetuation and filing forms as required in Section 55-1604, Idaho Code.  
(7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. FORM.**

The form to be used in filing corner perpetuations in the state of Idaho shall be substantially the same as that form available from the Idaho Board of Registration Licensure of Professional Engineers and Professional Land Surveyors, ~~600 S. Orchard, Suite A, Boise, Idaho 83705-1242~~ 5535 W. Overland Road, Boise, Idaho 83705-2728. Clear spaces on the form may be provided as requested and required by County Recorders in order to place recording information in an unobstructed area. The form is not available in quantity from the Board, but one (1) copy will be furnished, upon request, and it may be duplicated or reproduced.  
(3-30-01)( )

**006. COMPLETION OF FORM.**

Prior to filing of the form, the professional land surveyor performing the work shall complete the form in compliance with the requirements set forth in these rules. Additional information, for example latitude and longitude, with datum used, may be included.  
(7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. DESCRIPTION OF MONUMENT AND ACCESSORIES FOUND OR ESTABLISHED TO PERPETUATE THE LOCATION OF THIS CORNER.**

Information provided in this section shall include a description of the monument and accessories found or placed in the current survey as well as the date the work was performed and the true or assumed magnetic declination at the time of the survey of magnetic bearings are used. If magnetic bearings are not used, the professional land surveyor shall indicate the basis of bearing to accessories.  
(7-1-93)( )

**010. SURVEYOR'S CERTIFICATE.**

The surveyor shall print his name, the license number issued by the Board of Registration Licensure of Professional Engineers and Professional Land Surveyors, and the name of the employer for whom the surveyor is working.  
(7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. MARKS ON MONUMENT FOUND OR SET.**

The surveyor shall provide a sketch or legible image of the marks placed or found on the monument, if applicable.  
(7-1-93)( )

**013. DIAGRAM.**

The surveyor shall clearly mark on the section diagram the location of the monument found or being established or reestablished in the survey.  
(7-1-93)( )

**014. LOCATION.**

The surveyor shall state the county, section, township, range and the monument location being established or reestablished or found in the survey.  
(7-1-93)( )

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.04 - RULES OF CONTINUING PROFESSIONAL DEVELOPMENT**

**DOCKET NO. 10-0104-0801**

**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 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 intended negotiated rulemaking is to amend the Administrative Rules to:

1. Comply with updated terminology as incorporated in House Bill No. 380 passed by the 2008 session of the Idaho Legislature;
2. Include professional engineers in the requirement of continuing professional development as a condition of license renewal;
3. Revise "self-study," "membership," and "active participation" as qualifying activities for continuing professional development;
4. Allow a licensee to opt for a two (2) calendar year period of compliance rather than a renewal biennium;
5. Provide for an exemption for a licensee on active duty temporarily assigned to a location other than their normal home station; and
6. Provide for an exemption for professional engineers during their first renewal period or the two (2) calendar year period closest to the renewal biennium following adoption of these rules as they are amended to include professional engineers.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1) and (2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2008 Idaho Administrative Bulletin, Volume 08-7, Page 31.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyor  
5535 W. Overland Road, Boise, Idaho 83705  
Voice (208) 373-7210, Fax (208) 373-7213  
E-mail: dave.curtis@ipels.idaho.gov



**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0104-0801**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as Idaho Board of ~~Registration~~ Licensure of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.04, "Rules of Continuing Professional Development." (7-1-99)(\_\_\_\_)

**02. Scope.** In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following Rules of Continuing Professional Development, hereinafter referred to as Rules, have been promulgated in accordance with Section 54-1208, Idaho Code, and shall be binding in the state of Idaho upon every person holding a license to practice as a Professional Engineer or a Professional Land Surveyor, or both. Each Licensee under the laws of the state of Idaho is charged with being familiar with these rules and knowledgeable in their application to the practice of engineering or land surveying or both. Every Licensee shall meet the continuing professional development requirements of these rules as one of the conditions for license renewal. If an individual is licensed to practice both engineering and land surveying the individual must comply with the requirements of these rules in regard to each profession. Some activities as defined herein may qualify as continuing professional development for both professions and may be included in the log for each profession. These rules shall not be a basis for action involving civil liability, however, failure to obey these Rules may subject a Licensee to Board action pursuant to Chapter 12, Title 54, Idaho Code. (7-1-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (7-1-99)

**01. College Semester or Quarter Credit Hour.** Credit for college courses. (7-1-99)

**02. Continuing Education Unit (CEU).** Unit of credit customarily used for continuing education courses. One (1) continuing education unit equals ten (10) hours of class in an approved continuing education course. (7-1-99)

**03. Professional Development Hour (PDH).** A contact hour (minimum of fifty (50) minutes) of instruction or presentation. The common denominator for other units of credit. (7-1-99)

**04. Activity.** Any qualifying action with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice or practices. (7-1-99)(\_\_\_\_)

**05. Licensee.** A person who is licensed to practice as a professional engineer or professional land surveyor or both. (7-1-99)(\_\_\_\_)

**06. Board.** The Idaho Board of ~~Registration~~ Licensure of Professional Engineers and Professional Land Surveyors. (7-1-99)(\_\_\_\_)

**07. Documented Self-Study.** Documented study of professional/technical journals, published papers, articles, books, software or other areas of training which increase knowledge of the technology above and beyond routine job assignments. (7-1-99)(\_\_\_\_)

**08. Active Participation.** Serving as an officer or committee chair at either the national, state or local (section or chapter) level. (7-1-99)(\_\_\_\_)

**005. REQUIREMENTS.**

Every Licensee is required to obtain thirty (30) PDH units during the renewal period biennium (beginning on the first day of the month following the month in which the Licensee was born). Alternatively, the licensee may choose to obtain thirty (30) PDH units cumulative during the two (2) calendar years which are closest to the renewal period biennium. If a Licensee exceeds the biennial requirement in any renewal period or earns PDH's during a period in which he is exempt, a maximum of thirty (30) PDH units may be carried forward into the subsequent renewal period. If the licensee chooses to use the calendar year basis, PDH's in excess of thirty (30) cumulative in two (2) years, or PDH's earned during a period in which he is exempt, can be carried forward to the next two (2) year calendar period, not to exceed thirty (30) PDH's carried forward to the next two (2) year calendar period. PDH units may be earned in the following activities, however, PDH units must come from two (2) or more activities. ~~(3-30-01)~~(\_\_\_\_)

- 01. Successful Completion of College Credits.** (7-1-99)
- 02. Successful Completion of Continuing Education Units.** (7-1-99)
- 03. Successful Completion of Other Courses.** Correspondence, televised, videotaped, and other short courses/tutorials for which college credits or CEU's are awarded. (7-1-99)
- 04. Attending Qualifying Seminars.** Attending qualifying seminars, in-house courses, workshops, or technical or professional presentations made at meetings, conventions, or conferences. (7-1-99)
- 05. Teaching or Instructing.** Teaching or instructing in Subsections 005.01 through 005.04 above, above and beyond routine job assignments. (7-1-99)
- 06. Authoring Published Papers, Articles, or Books.** (7-1-99)
- 07. Membership in Technical or Professional Organizations.** (7-1-99)
- 08. Active Participation in Technical or Professional Organizations.** (7-1-99)
- 09. Patents.** (7-1-99)
- 10. Presentations to Technical, Professional or Civic Organizations.** (7-1-99)
- 11. Documented Self Study.** ~~(7-1-99)~~(\_\_\_\_)

**006. UNITS.**

The conversion of other units of credit to PDH (Professional Development Hour) units is as follows:

1 College semester credit hour equals	45 PDH
1 College quarter credit hour equals	30 PDH
1 Continuing Education Unit equals	10 PDH
1 Hour of attendance in course work, seminars, or technical or professional presentations made at meetings, conventions, or conferences equals	1 PDH
Teaching <del>1 through 4</del> the above, above and beyond normal job assignments, apply multiple of 2 <u>for teaching the first time only</u>	
Each published <u>technical or professional</u> paper, article or book not to exceed <u>a total of 10</u> PDH's per year, above and beyond normal job assignments	<u>5 PDH per paper, article or book</u>
<u>Membership in 7</u> technical or professional organizations <del>membership</del> ( <u>Each Maximum of two organizations</u> ) equals	<u>3 1 PDH per year per organization</u>

Active participation in technical <del>and</del> or professional organizations ( <del>Each</del> <u>Maximum of two</u> organizations) equals	<u>3</u> 1 PDH per year per organization
Each patent not to exceed <u>per year</u>	5 PDH
Presentations to technical, professional or civic organizations, <u>first presentation only</u> , equals	2 PDH per hour of presentation
Documented self-study not to exceed	<del>5</del> <u>3</u> PDH per year at the rate of <u>1/2</u> PDH per hour of self-study

(7-1-99)( )

**007. DETERMINATION OF CREDIT.**

The Board will not pre-approve activities as qualifying for continuing professional development, but has final authority to judge the PDH value for all activities submitted to fulfill ~~CPD~~ continuing professional development requirements. (3-30-01)( )

**008. RECORD KEEPING.**

Maintenance of records to support credits claimed is the responsibility of the Licensee. Records required include, but are not limited to: (7-1-99)

**01. Log.** A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; (7-1-99)

**02. Attendance Verification.** Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance; or (7-1-99)

**03. Records.** Records ~~as~~ may be maintained by the Professional Development Registry for Engineers and Surveyors (PDRES) or other similar repositories a repository for same. These records must be maintained for a period of five (5) years and copies may be requested by the Board for audit verification purposes. (7-1-99)( )

**04. Documented Self-Study.** In order to qualify in this category, the licensee must prepare and retain an abstract of the material studied, the date the activity occurred and the number of PDH's claimed, and a bibliographic reference of the material studied. ( )

**05. Record Retention.** All continuing professional development records must be maintained for a period of six (6) years and copies must be provided to the Board upon request for audit purposes. ( )

**009. EXEMPTIONS.**

A Licensee may be exempt from the continuing professional development requirements for one (1) of the following reasons: (7-1-99)

**01. First Renewal Period.** New Licensees by way of examination or comity shall be exempt for their first renewal period from compliance with these rules during the time between issuance of the license and the due date of their first renewal following the issuance of the license. (7-1-99)( )

**02. Active Duty in the Armed Forces.** A Licensee serving on ~~temporary~~ active duty in the armed forces of the United States and temporarily assigned duty at a location other than their normal home station for a period of time exceeding one hundred twenty (120) consecutive days in a renewal period or the two (2) calendar year period closest to the renewal biennium shall be exempt from obtaining the professional development hours required during that renewal period or the two (2) calendar year period closest to the renewal biennium. (3-30-01)( )

**03. Extenuating Circumstances.** A Licensee experiencing physical disability, serious illness, or other extenuating circumstances accepted by the board. (7-1-99)

**04. Retired and Receiving No Remuneration.** A Licensee who has chosen and qualified for the

“Retired” status and who further certifies that they are no longer receiving any remuneration from providing professional engineering or professional land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or professional land surveying, professional development hours must be earned before returning to active practice for each biennium or the two (2) calendar year period closest to the renewal biennium exempted not to exceed the requirement for two (2) bienniums or four (4) calendar years. ~~(3-30-01)~~(\_\_\_\_)

**05. Expired License.** A Licensee who has chosen to allow his license to expire shall be exempt from the professional development hours required. In the event such a person elects to reactivate the license, professional development hours must be earned and documented before reinstating the license ~~or certificate~~ for each biennium or two (2) calendar years exempted not to exceed the requirement for two (2) bienniums or four (4) calendar years. ~~(3-30-01)~~(\_\_\_\_)

**06. Renewal Period Following Adoption of These Rules as They are Amended to Include Professional Engineers.** All professional engineers shall be exempt from compliance with these rules during the time between the effective date of this subsection and the due date of their first renewal following the effective date of this subsection. (\_\_\_\_)

**IDAPA 11- IDAHO STATE POLICE  
IDAHO STATE RACING COMMISSION**

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0801 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-2506 and 54-2508 Idaho Code.

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

**THURSDAY - OCTOBER 9, 2008 - 6:30 pm to 7:00 pm**

**NAMPA CIVIC CENTER - Casler Room  
311 3rd Street South, Nampa, 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: Repeal current IDAPA 11.04.02, which is being replaced by a new Chapter.

**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: Confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. However, this rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Jackson, Executive Director of the Idaho State Racing Commission, 208-884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

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**IDAPA 11.04.02 IS BEING REPEALED IN ITS ENTIRETY.**

**IDAPA 11- IDAHO STATE POLICE  
IDAHO STATE RACING COMMISSION**

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0802 (CHAPTER REWRITE)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-2506 and 54-2508 Idaho Code.

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

**THURSDAY - OCTOBER 9, 2008 - 6:30 pm to 7:00 pm**

**NAMPA CIVIC CENTER  
Casler Room  
311 3rd Street South, Nampa, 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 rewrite provides for a clear and concise chapter on Simulcast Rules. In addition, this rule conforms more closely with the Association of Racing Commissioners International model rules in a plain English format.

**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: Confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 Section 67-5220, Idaho Code, formal negotiated rulemaking was not conducted. However, this rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Jackson, Executive Director of the Idaho State Racing Commission, 208-884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0802**

**IDAPA 11**  
**TITLE 04**  
**CHAPTER 02**

**IDAHO STATE RACING COMMISSION**

**11.04.02 - RULES GOVERNING SIMULCASTING**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, Idaho Code. (11-12-08)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules are cited as IDAPA 11.04.02, "Rules Governing Simulcasting," of the Idaho State Racing Commission. (11-12-08)T

**02. Scope.** These rules regulate simulcasting within Idaho and all aspects of simulcasting. (11-12-08)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules (11-12-08)T

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal Racing Commission actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (11-12-08)T

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference into these rules. (11-12-08)T

**005. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Physical Address.** The central office of the Idaho State Racing Commission is located at 700 S. Stratford Drive, Meridian, Idaho. (11-12-08)T

**02. Office Hours.** The central office is open 8 a.m. to 5 p.m., Mountain Time, Monday thru Friday, except holidays designated by the state of Idaho. (11-12-08)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. (11-12-08)T

**04. Telephone Number.** The telephone of the office is (208) 884-7080. (11-12-08)T

**05. Fax Number.** The facsimile number of the office is (208) 884-7098. (11-12-08)T

**06. Website.** The Racing Commission website is: <http://www.isp.state.id.us/race>. (11-12-08)T

**006. PUBLIC RECORDS AVAILABILITY.**

These rules are public records available for inspection and copying at the Idaho State Racing Commission central office or on the Racing Commission website. (11-12-08)T

007. -- 009. (RESERVED).

**010. DEFINITIONS.**

**01. Association Which Accepts the Wager.** The guest association to which the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (11-12-08)T

**02. Authorized User.** A person authorized by the Racing Commission to receive, decode, and use for legal purposes the encrypted simulcast signal of pari-mutuel events. (11-12-08)T

**03. Breakage.** The odd cents rounded down to the lowest multiple of ten cents (\$.10) in a positive pool and down to the lowest multiple of five cents (\$.05) in a minus pool. (11-12-08)T

**04. Combined Pools.** The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association. (11-12-08)T

**05. Decoder.** A device or means to convert encrypted audio-visual signals or data into a form recognizable as the original content of the signals. (11-12-08)T

**06. Downlink.** A receiving antenna coupled with an audio-visual signal receiver that is compatible with and capable of receiving simultaneous audio-visual signals or data emanating from a host association. This includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (11-12-08)T

**07. Enclosure, Enclosure-Public.** Includes all enclosed areas of the simulcast wagering facility. (11-12-08)T

**08. Encryption.** The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (11-12-08)T

**09. Foreign Jurisdiction.** A jurisdiction of a foreign country or political subdivision thereof. (11-12-08)T

**10. Guest, Guest Association or Simulcast Operator.** A simulcast licensee authorized by the Racing Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (11-12-08)T

**11. Handle or Gross Handle.** Total amount of money wagered on a race less refunds and cancels. (11-12-08)T

**12. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (11-12-08)T

**13. Host or Host Association.** The racing association conducting a licensed horse racing meeting when it is authorized by the Racing Commission to simulcast its racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (11-12-08)T

**14. Hub.** A facility that acts as an intermediary between pari-mutuel wagering facilities for the transmission of wagering data and that is responsible for generating all reports necessary for the reconciliation of payments. (11-12-08)T

**15. Interstate Simulcast Wagering.** (11-12-08)T

**a.** Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association; or (11-12-08)T



**b.** Wagering conducted by a betting system within the state of Idaho on the results of one (1) or more races being run at a host association outside the state of Idaho. (11-12-08)T

**16. Intrastate Simulcasting Wagering.** Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (11-12-08)T

**17. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T

**18. Racing Commission.** Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T

**19. Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T

**20. Simulcast Facility.** The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events. Such facility must be a part of the license granted to the guest or host association. (11-12-08)T

**21. Simulcast Service Supplier.** (11-12-08)T

**a.** A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment. (11-12-08)T

**b.** It does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (11-12-08)T

**22. Satellite Transponder, Transponder.** Leased space segment time of an earth-orbit communication satellite. (11-12-08)T

**23. Take or Takeout.** Money deducted from mutuel pools that is shared by the track and local and state governing bodies in the form of a tax. (11-12-08)T

**24. Totalisator.** A computer that, directly or indirectly through one (1) or more other totalisators, receives pari-mutuel wagering information, calculates pay-offs for winning tickets and generates reports with respect to such information, and may refer to the linked computers of the hub and the track. (11-12-08)T

**25. Uplink.** An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals or data on Federal Communication Commission-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the uplink. (11-12-08)T

**011. ABBREVIATIONS.**  
There are no abbreviations used in these rules. (11-12-08)T

**012. -- 014. (RESERVED).**

**015. REQUIREMENTS FOR LICENSURE OF A SIMULCAST FACILITY.**

**01. General.** Any racing association or simulcast operator authorized under these rules to conduct pari-mutuel wagering who desires to display the simulcast of pari-mutuel events on which pari-mutuel betting will be permitted, in the manner and subject to the conditions provided for under these rules, may apply to the Racing Commission for a license. (11-12-08)T

**02. Application for License.** The application for a license must be in such form as may be prescribed by the Racing Commission and must contain such information or other material or evidence as the Racing Commission may require. (11-12-08)T

**03. Daily Simulcast License Fee.** The fee for such license is based upon the weekly handle. (11-12-08)T

**a.** If the handle is greater than thirty thousand dollars (\$30,000), the fee will be one hundred dollars (\$100) per day of simulcast operation payable by the licensee to the Racing Commission. Seventy-five dollars (\$75) of this fee will be paid to the Idaho State Racing Commission and twenty-five (\$25) will be deposited in the Public School Income Fund. (11-12-08)T

**b.** If the weekly handle is at least fifteen thousand dollars (\$15,000), but less than thirty thousand dollars (\$30,000), the fee will be fifty dollars (\$50) per day of simulcast operation payable by the licensee to the Racing Commission. Twenty-five dollars (\$25) of this fee will be deposited in the Public School Income Fund and twenty-five dollars (\$25) will be paid to the Idaho State Racing Commission. (11-12-08)T

**c.** If the weekly handle is less than fifteen thousand dollars (\$15,000), the fee will be twenty-five dollars (\$25) which will be deposited in the Public School Income Fund. (11-12-08)T

**04. Review and Approve.** Before the Racing Commission grants such license, it will review and approve a plan of operation submitted with a license application including, but not limited to, the following information: (11-12-08)T

**a.** A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such a facility. The feasibility study includes: (11-12-08)T

i. The number of simulcast races to be displayed; (11-12-08)T

ii. The types of wagering to be offered; (11-12-08)T

iii. The level of attendance expected and the area from which such attendance will be drawn; (11-12-08)T

iv. The level of anticipated wagering activity; (11-12-08)T

v. The source and amount of revenues expected from other than pari-mutuel wagering; (11-12-08)T

vi. The cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs; and (11-12-08)T

vii. The probable impact of the proposed operation on revenues to local government. (11-12-08)T

**b.** The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of wagering data to effectuate common wagering pools. (11-12-08)T

**c.** The type of data processing, communication and transmission equipment to be utilized. (11-12-08)T

**d.** The description of the management groups responsible for the operation of the simulcast facility. (11-12-08)T

**e.** The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues and the accounting of costs relative to the simulcast operation. (11-12-08)T

**f.** The location of the facility and a written confirmation from appropriate local officials that the

location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances, along with approval by appropriate county or city officials. (11-12-08)T

**016. CRITERIA FOR APPROVAL OF APPLICATION FOR SIMULCAST OPERATOR.**

The Racing Commission uses the following decisional criteria in the approval or disapproval of an application for simulcast operator. (11-12-08)T

**01. General Benefit to the State.** The operator's general benefit to the state of Idaho. (11-12-08)T

**02. General Benefit to Horse Racing Industry.** The operator's general benefit to the state of Idaho's horse racing industry. (11-12-08)T

**03. Operator's Integrity.** The operator's integrity, including: (11-12-08)T

**a.** Individual and corporate conduct; (11-12-08)T

**b.** Criminal history; and (11-12-08)T

**c.** Betting and gaming industry conduct. (11-12-08)T

**04. Operator's Credibility.** The operator's credibility, including: (11-12-08)T

**a.** Accuracy of a feasibility study; and (11-12-08)T

**b.** Experience and expertise of the operator in the simulcast industry. (11-12-08)T

**05. Financial Stability.** The operator's financial stability. (11-12-08)T

**017. -- 025. (RESERVED).**

**026. HOST ASSOCIATION.**

**01. Contract.** Subject to Racing Commission approval of a simulcast contract, a host association licensed by the Racing Commission may simulcast its horse races to intrastate, interstate and out-of-state authorized users for the purpose of pari-mutuel wagering. (11-12-08)T

**02. Content.** A racing association is responsible for the content of its simulcast and must use all reasonable effort to present a simulcast that offers the viewers an exemplary depiction of its racing program, a periodic display of wagering information, and continuity programming between horse racing events. (11-12-08)T

**03. Video.** Unless otherwise permitted by the Racing Commission, every simulcast must contain in its video content a digital display of the actual time of day, the name of the host facility from where it emanates, the number of the horse race being displayed, and the minutes to post. (11-12-08)T

**04. Security Controls.** As a condition of contract approval, or when deemed necessary by the Racing Commission, the host association may be required to provide and maintain security controls, including encryption over its uplink and communications systems. (11-12-08)T

**027. GUEST ASSOCIATIONS.**

**01. Contract Approval.** Guest racing associations that are licensed by the Racing Commission and subject to contract approval by the Racing Commission may receive simulcast races for the purpose of pari-mutuel wagering from one (1) or more host associations. (11-12-08)T

**02. Plan for Testing.** A plan that is subject to approval by the Racing Commission must be submitted by a guest racing association for testing the transmission, encryption and decoding, and data communication to assure proper system function prior to the commencement of each simulcast program or race from a host association.

(11-12-08)T

**028. INTERSTATE COMMON POOL WAGERING.**

Subject to contract approval by the Racing Commission, a racing association may participate in common pool wagering by accepting wagers placed in other jurisdictions or by offering wagers on races run in other jurisdictions. Contract approval requirements include, but may not be limited to, the following: (11-12-08)T

**01. Licensing Requirement.** A contract to participate in interstate common pool wagering must include evidence that the authorized user in the other jurisdiction is licensed or otherwise authorized or approved by the pari-mutuel authority or equivalent in that jurisdiction. (11-12-08)T

**02. Pari-Mutuel Systems Requirement.** A contract to participate in interstate common pool wagering must: (11-12-08)T

**a.** Include evidence that the authorized user in the other jurisdiction utilizes a pari-mutuel wagering system fully compliant with requirements for totalisator systems used by licensed racing associations in Idaho; (11-12-08)T

**b.** Specify the regulatory authority responsible for granting a license to the racing association serving as host for purposes of aggregation of common pool wagering; (11-12-08)T

**c.** Specify the name and location of the racing association that is the host for the common pool, and the individuals and contact information for matters relating to the contract and common pool wagering; and (11-12-08)T

**d.** Specify the name of the totalisator company, location of the totalisator facility utilized to receive wagers and aggregate pools for the purpose of common pool wagering and the individuals and contact information for matters relating to the contract and common pool wagering. (11-12-08)T

**03. Access to Reports and Wagering Information Requirement.** A contract to participate in interstate common pool wagering must include evidence that the authorized user in the other jurisdiction will provide full and prompt access to, and cooperation in providing, all reports and information that may be requested by the Racing Commission. This includes wagering transaction data in either a hard copy report or a standard electronic data format acceptable to the Racing Commission. Such requirement apply to all wagering on races run in Idaho and all wagering pools that accept wagers placed from Idaho. (11-12-08)T

**04. Breakage.** The contract must include provisions specifying the distribution of breakage consistent with the requirement for wagers placed in Idaho. (11-12-08)T

**029. NET POOL PRICING.**

**01. Takeout Rates.** If takeout rates are not the same for all jurisdictions and net pool pricing is utilized, the contract must specify net pool pricing. (11-12-08)T

**a.** Individual wagering transactions are deemed to be made at the point of sale in the state where placed unless otherwise specified by statute or court ruling. (11-12-08)T

**b.** Any surcharges or withholdings in addition to the takeout must only be applied in the jurisdiction otherwise imposing such surcharges or withholdings. (11-12-08)T

**c.** In determining whether to approve an interstate common pool which does not include the host track or which includes races from more than one racing association, the Racing Commission will consider and may approve use of a bet type which is not utilized at the host association, application of a takeout rate not in effect at the live event track, or other factors which are presented to the Racing Commission. (11-12-08)T

**d.** The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar

information permitted or required to be displayed under these rules. (11-12-08)T

**02. Guest Participation in Interstate Common Pools.** (11-12-08)T

**a.** The Racing Commission may approve a takeout from the pari-mutuel pools identical to that of other jurisdictions participating in a merged pool. (11-12-08)T

**b.** Rules of racing as established for the race in the host state will apply to the merged pool. (11-12-08)T

**c.** The simulcast operator must designate which one of the following procedures it will use if it becomes impossible to successfully merge the corresponding pools into the interstate common pool, and must publish their designated procedure in the printed program: (11-12-08)T

**i.** Compute payouts in accordance with payout prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; or (11-12-08)T

**ii.** With permission of the Racing Commission, pay winning tickets at the payout prices at the host track; or (11-12-08)T

**iii.** Declare such accepted bets void and make refunds in accordance with the applicable rules. (11-12-08)T

**030. HOST PARTICIPATING IN INTERSTATE COMMON POOLS.**

**01. Rules of Racing Established.** Rules of racing established for races held in Idaho will also apply to interstate common pools unless the Racing Commission has specifically determined otherwise. (11-12-08)T

**02. When Impossible to Merge Pools.** Any contract for interstate common pools must contain a provision that states that if, for any reason, it becomes impossible to successfully accept placed wagers or to merge corresponding pools into the interstate common pool formed by the pari-mutuel pool host and the Racing Commission's or the pari-mutuel pool host's representative determines that accepting wagers or attempting to effect transfer of pool data from the guest association may endanger the integrity of the pool or the timely processing of payouts, the pari-mutuel pool host will have no liability for guest's wagers or corresponding pools not being accepted into the host pool. (11-12-08)T

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

**035. LICENSES FOR SIMULCAST OPERATORS.**

**01. License.** Every person acting as a simulcast operator within Idaho must procure a license from the Racing Commission and no person will act in the capacity of a simulcast operator without a valid license. Such license may be renewed annually unless the application is denied for any cause that justifies the suspension or revocation of the license for violation of these rules. (11-12-08)T

**02. Responsibilities of Applicant.** Each applicant must: (11-12-08)T

**a.** Submit a financial statement as required by the Idaho State Racing Commission; (11-12-08)T

**b.** Post with the Racing Commission a surety, in the amount and in such form as the Racing Commission may require, that is sufficient to ensure payment of distributable amounts of pari-mutuel pools pursuant to statute, operational costs, salaries, wages, benefits, and related financial obligations; and (11-12-08)T

**c.** Demonstrate experience or adequate knowledge of the conduct of simulcast wagering or pari-mutuel wagering operations. (11-12-08)T

**03. Simulcast License Application.** The simulcast operator intending to conduct wagering on an out-

of-state race must file with the Racing Commission a completed simulcast application. The application will be provided and approved by the Racing Commission. At a minimum the application will require the applicant to provide the following information: (11-12-08)T

- a. The number of live races projected in the current year; (11-12-08)T
- b. The number of live races run in the preceding year; (11-12-08)T
- c. Documentation that the required bond has been posted; (11-12-08)T
- d. Documentation that the appropriate public liability insurance has been obtained; (11-12-08)T
- e. Evidence of approval from the appropriate county or city officials; (11-12-08)T
- f. A signed contract from a local horsemen's group. The horsemen's group must be one that meets the definition of a horsemen's group as defined in Section 54-2502, Idaho Code. The contract must not conflict with any of the provisions of Sections 3001 through 3007 of Title 15 of the United States Code or any other federal laws; (11-12-08)T
- g. A statement setting forth the date and time it intends to commence accepting wagers on out-of-state race or races; and (11-12-08)T
- h. Any other written or oral approvals required by the Racing Commission. (11-12-08)T

**04. Restrictions.** (11-12-08)T

- a. No license will be granted to any person or entity that has failed, refused or neglected to comply with any rule, condition of license, or order of the Racing Commission or its stewards that is reasonably related to its conduct as a simulcast operator. (11-12-08)T
- b. No license will be granted to any person or entity that has engaged in any activity that is grounds for denial, suspension or revocation of license pursuant to the rules of the Racing Commission or whose general partners, officers, directors, or employees have engaged in any unlawful activity determined to be conduct detrimental to the best interest of horseracing. (11-12-08)T
- c. Additionally, no license will be granted to a person or entity that has failed, refused or neglected to enter into an agreement with a horsemen's group as defined in Section 54-2502, Idaho Code. (11-12-08)T

**05. No Limitation.** There will be no limitation as to the number of days a licensee may operate except as may otherwise be provided for within these rules or the Idaho Code. (11-12-08)T

**036. SIMULCAST PURSE MONEY COLLECTION AND DISTRIBUTION.**

**01. Designated Purse Monies.** Each simulcast operator licensed by the Racing Commission must remit to the Racing Commission those monies designated by the horsemen's agreement as purse monies. Payment must be made on a timely basis as provided in said agreement which will in no event be greater than thirty (30) days after accrual to the simulcast facility. (11-12-08)T

**02. Dual Signature Insured Account.** Each horsemen's group signatory to a horsemen's agreement authorizing simulcasting must open and maintain a dual signature insured account, hereinafter called a "purse accumulation account." (11-12-08)T

**03. Deposit into Appropriate Account.** Prior to commencement of the live race meet, the Racing Commission will annually deposit into the appropriate purse accumulation account those funds paid to the Racing Commission by the respective simulcast operator(s). The Racing Commission has the authority to approve more frequent payments, if requested by said horseman's group. (11-12-08)T

**04. Sanctions.** In addition to all available sanctions, any person or licensee who receives monies designated as purse monies as described in these rules, and who violates these rules, can be ordered to pay a monetary penalty as set forth in Section 54-2509(4), Idaho Code, and daily interest accrued thereupon at the rate set by the Idaho State Treasurer. (11-12-08)T

**037. -- 039. (RESERVED).**

**040. DUTIES OF SIMULCAST OPERATOR.**

**01. General.** A simulcast operator conducts and operates a pari-mutuel wagering system at one (1) or more guest associations on the results of horse races being held or conducted and simulcast from the enclosures of one (1) or more host associations pursuant to its agreement with such guest and host association and with the approval of the Racing Commission. (11-12-08)T

**02. Provisions.** A simulcast operator must provide: (11-12-08)T

**a.** Adequate transmitting or receiving equipment that does not interfere with the closed circuit TV system of the host association. All equipment must be of acceptable broadcast quality and meet applicable Federal Communications Commission and Racing Commission rules and orders. Said equipment may include approved microwave transmitters, with appropriate safeguards, as approved by the Racing Commission. (11-12-08)T

**b.** Pari-mutuel terminals, pari-mutuel odds display, modems or switching units enabling pari-mutuel data transmissions, and data communication between the sending and the receiving racing associations. (11-12-08)T

**03. Pari-Mutuel Inspector.** The Racing Commission will appoint at least one (1) state pari-mutuel inspector to monitor all approved simulcast facilities and may require additional pari-mutuel inspectors as is reasonably necessary for the protection of the public interest. The state pari-mutuel inspector, as well as a member or members of the Racing Commission, must: (11-12-08)T

**a.** Be given free access to all of the books, papers and records of the simulcast operator's simulcast operations during normal business hours. (11-12-08)T

**b.** Be empowered to direct the simulcast operator to adopt such rules and to install such methods and systems of operating the mutuel department as may be deemed reasonably necessary so as to ensure compliance with the law and the rules of the Racing Commission. (11-12-08)T

**c.** The state pari-mutuel inspector must report to the Racing Commission any failure of the licensee to comply with the provision hereof or any violation of the law or any of the rules of the Racing Commission which may come to his attention, including in his reports, recommendations with respect to the revocation of the licenses of any employee of the simulcast operator for failure to comply with the rules of the Racing Commission, or for fraud, dishonesty, or incompetency. (11-12-08)T

**04. Video Record.** Upon the request of the Racing Commission the simulcast operator must make its best effort to provide the Racing Commission with a copy of the simulcast race requested. (11-12-08)T

**05. Test Program.** Not less than thirty (30) minutes prior to the commencement of transmission of the racing program for each day or night, the simulcast operator must initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system. (11-12-08)T

**06. Locations Listing.** At the request of any representative of the Racing Commission the Racing Association must provide a listing of all locations within this state enabled to receive the simulcast in decoded forms. Failure to do so is grounds for immediate summary suspension of license and immediate cessation of simulcasting activities. (11-12-08)T

**07. Security.** The Racing Association must maintain such security controls over its uplink and communications system as directed by the Racing Commission. (11-12-08)T

**08. Filing.** Every simulcast operator at the request of the Racing Commission must file an annual report of its simulcast operations, and an audited balance sheet and income statement prepared according to Generally Accepted Accounting Principles. (11-12-08)T

**09. Compliance.** The simulcast operator must comply with Section 54-2512, Idaho Code. (11-12-08)T

**041. PROHIBITION OF SIMULCAST SIGNAL.**

Pertaining to the simulcasting of greyhound racing, should substantial, competent evidence of cruelty to or misconduct in the treatment of greyhounds occur at a site under the jurisdiction of another state regulatory agency, the Racing Commission will prohibit the retransmission of any and all simulcast signals until appropriate action has been taken by the other state regulatory agency. (11-12-08)T

**042. -- 044. (RESERVED).**

**045. DISTRIBUTION OF DEPOSITS.**

The Racing Commission will distribute deposits generated by simulcast races in accordance with the provisions of Section 54-2507 and 54-2513, Idaho Code, as applicable. (11-12-08)T

**046. CONFLICT OF LAWS.**

In the event of a conflict between the laws of the host track and the laws or rules of the state of Idaho, the laws or rules of the state of Idaho will apply. (11-12-08)T

**047. - 999. (RESERVED).**



**IDAPA 11- IDAHO STATE POLICE  
IDAHO STATE RACING COMMISSION**

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0803**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 17, 2008.

**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 54-2506 and 54-2508, Idaho Code.

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

**THURSDAY - OCTOBER 9, 2008 - 7:00 pm to 9:00 pm**

**NAMPA CIVIC CENTER  
Casler Room  
311 3rd Street South, Nampa, 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:

Virtual Racing promotes the purpose of enhancing and protecting the live horse race industry in Idaho. It does this by increasing the proceeds paid to the horsemen's groups, which contributes to increasing the horsemen's purses in Idaho. In addition, simulcasting allows Virtual Racing to obtain wagering dollars from out-of-state and interstate wagering sources to help enhance the Idaho horsemen's purses. The greater the horsemen's purses, the more stable and sound the live horse racing industry will be in Idaho. Such innovations are needed in Idaho to make racing profitable enough to sustain its live racing industry.

Specifically, the following proposed rules changes are requested and amend the current definitions in IDAPA 11.04.02.010.

(NEW) 14. Horse Race. A contest authorized by the Racing Commission that is among horses, including virtual horses, using the pari-mutuel wagering system at any licensed race track.

(AMENDED) 15. Host or Host Association. The racing association conducting a horse race when it is authorized by the Racing Commission to simulcast its horse racing program. It may also be considered the sending track which means any track from which simulcast signals originate.

(NEW) 28. Virtual Horse. A computer-based, three dimensional graphical race horse, produced in a manner to replicate the characteristics of a living race horse.

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

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: There is no fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no impact to the General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. However, this rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Jackson, Executive Director of the Idaho State Racing Commission, 208-884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008

Dennis Jackson  
Executive Director  
Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700  
208-884-7080 (phone) /208-884-7098 (fax)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0803**

**010. DEFINITIONS.**

**01. Association That Accepts the Wager.** The guest association to which the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (11-12-08)T

**02. Authorized User.** A person authorized by the Racing Commission to receive, decode, and use, for legal purposes, the encrypted simulcast signal of pari-mutuel events. (11-12-08)T

**03. Breakage.** The odd cents rounded down to the lowest multiple of ten cents (\$.10) in a positive pool and down to the lowest multiple of five cents (\$.05) in a minus pool. (11-12-08)T

**04. Combined Pools.** The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association. (11-12-08)T

**05. Decoder.** A device or means to convert encrypted audio-visual signals or data into a form recognizable as the original content of the signals. (11-12-08)T

**06. Downlink.** A receiving antenna coupled with an audio-visual signal receiver that is compatible with and capable of receiving simultaneous audio-visual signals or data emanating from a host association. This includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (11-12-08)T

- 07. Enclosure, Enclosure-Public.** Includes all enclosed areas of the simulcast wagering facility. (11-12-08)T
- 08. Encryption.** The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (11-12-08)T
- 09. Foreign Jurisdiction.** A jurisdiction of a foreign country or political subdivision thereof. (11-12-08)T
- 10. Guest, Guest Association or Simulcast Operator.** A simulcast licensee authorized by the Racing Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (11-12-08)T
- 11. Handle or Gross Handle.** Total amount of money wagered on a race less refunds and cancels. (11-12-08)T
- 12. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (11-12-08)T
- 13. Horse Race.** A contest authorized by the Racing Commission that is between horses, including virtual horses, using the pari-mutuel wagering system at any licensed race track. (11-17-08)T
- 134. Host or Host Association.** The racing association conducting a ~~licensed~~ horse ~~racing-meeting~~ race when it is authorized by the ~~Racing~~ Commission to simulcast its ~~horse~~ racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (~~11-12-08~~)T(11-17-08)T
- 145. Hub.** A facility that acts as an intermediary between pari-mutuel wagering facilities for the transmission of wagering data and that is responsible for generating all reports necessary for the reconciliation of payments. (11-12-08)T
- 156. Interstate Simulcast Wagering.** (11-12-08)T
- a.** Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association; or (11-12-08)T
- b.** Wagering conducted by a betting system within the state of Idaho on the results of one (1) or more races being run at a host association outside the state of Idaho. (11-12-08)T
- 167. Intrastate Simulcasting Wagering.** Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (11-12-08)T
- 178. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T
- 189. Racing Commission.** Three member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T
- ~~190.~~ **Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T
- 201. Simulcast Facility.** The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events. Such facility must be a part of the license granted to the guest or host association. (11-12-08)T
- 212. Simulcast Service Supplier.** (11-12-08)T

**a.** A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment. (11-12-08)T

**b.** It does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (11-12-08)T

**223. Satellite Transponder, Transponder.** Leased space segment time of an earth-orbit communication satellite. (11-12-08)T

**234. Take or Takeout.** Money deducted from mutuel pools that is shared by the track and local and state governing bodies in the form of a tax. (11-12-08)T

**245. Totalisator.** A computer that, directly or indirectly through one (1) or more other totalisators, receives pari-mutuel wagering information, calculates pay-offs for winning tickets and generates reports with respect to such information, and may refer to the linked computers of the hub and the track. (11-12-08)T

**256. Uplink.** An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals or data on Federal Communication Commission-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the uplink. (11-12-08)T

**27. Virtual Horse.** A computer-based, three-dimensional graphical race horse, produced in a manner to replicate the characteristics of a living race horse. (11-17-08)T

**IDAPA 11- IDAHO STATE POLICE  
IDAHO STATE RACING COMMISSION**

**11.04.13 - RULES GOVERNING THE IDAHO STATE RACING COMMISSION**

**DOCKET NO.11-0413-0801 (NEW CHAPTER)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-2506, Idaho Code.

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

**THURSDAY - OCTOBER 9, 2008 - 6:00 pm to 6:30 pm**

**NAMPA CIVIC CENTER  
Casler Room  
311 3rd Street South, Nampa, 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 rule provides a clear concise rule chapter on the State Racing Commission. In addition, this rule conforms more closely with the Association of Racing Commissioners' International Model Rules in a plain English format.

**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: Confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. However, this rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Jackson, Executive Director of the Idaho State Racing Commission, 208-884-7080. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0413-0801**

**IDAPA 11**  
**TITLE 04**  
**CHAPTER 13**

**IDAHO STATE RACING COMMISSION**

**11.04.13 - RULES GOVERNING THE IDAHO STATE RACING COMMISSION**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (11-12-08)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules are cited as IDAPA 11.04.13, "Rules Governing the Idaho State Racing Commission." (11-12-08)T

**02. Scope.** These rules govern the Idaho State Racing Commission. (11-12-08)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (11-12-08)T

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal Racing Commission actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (11-12-08)T

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference into these rules. (11-12-08)T

**005. OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Physical Address.** The central office of the Idaho State Racing Commission is located at 700 S. Stratford Drive, Meridian, Idaho. (11-12-08)T

**02. Office Hours.** The central office is open 8 a.m. to 5 p.m., Mountain Time, Monday thru Friday, except holidays designated by the state of Idaho. (11-12-08)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. (11-12-08)T

**04. Telephone Number.** The telephone of the office is (208) 884-7080. (11-12-08)T

**05. Fax Number.** The facsimile number of the office is (208) 884-7098. (11-12-08)T

**06. Website.** The Racing Commission website is: <http://www.isp.state.id.us/race>. (11-12-08)T

**006. PUBLIC RECORDS COMPLIANCE AND AVAILABILITY.**

These rules are public records and are available for inspection and copying at the Idaho State Racing Commission central office or on the Racing Commission website. (11-12-08)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

- 01. Advance Deposit Wagering.** A form of pari-mutuel wagering in which a natural person may deposit money in an account with a advanced deposit wagering operator and then use the current balance to pay for pari-mutuel wagering. (11-12-08)T
- 02. Annual Report.** Reports that the Racing Commission prepares and submits to the Governor no later than March 31st of each year that embody detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued. (11-12-08)T
- 03. Chairman.** The presiding officer of the Racing Commission. (11-12-08)T
- 04. Commissioner.** One (1) of the three (3) members of the Idaho State Racing Commission. (11-12-08)T
- 05. Costs.** Charges and expenses reasonably necessary to carry out the business of the Racing Commission. (11-12-08)T
- 06. Exclusion.** The act of preventing a person from entering or remaining on the grounds of any racing association or simulcast facility under the jurisdiction of the Racing Commission. (11-12-08)T
- 07. License.** A permission granted by the Racing Commission to engage in any regulated activity. (11-12-08)T
- 08. Meeting.** An assembly of the Racing Commission at the call of the chair or a majority of the members or as otherwise provided by Idaho Code. (11-12-08)T
- 09. Membership.** The members of the Racing Commission appointed by the Governor of the State of Idaho. (11-12-08)T
- 10. Natural Person.** Any person eighteen (18) years of age or older, but does not include any corporation, partnership, limited liability company, trust, or estate. (11-12-08)T
- 11. Person.** Any individual, racing association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, limited liability company or any legal entity, that is recognized by law as the subject of rights and duties. (11-12-08)T
- 12. Quorum.** Two (2) or more members of the Racing Commission. (11-12-08)T
- 13. Race.** A contest between horses for purse, stake or reward run by any racing association and in the presence of a judge or judges. (11-12-08)T
- 14. Race Days.** The number of racing days authorized by the Racing Commission in a racing association license. (11-12-08)T
- 15. Race Meet.** Includes any exhibition of thoroughbred, purebred, or registered horse racing and mule racing and dog racing at which the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one (1) gender will be regarded as including all other genders. (Section 54-2502, Idaho Code) (11-12-08)T
- 16. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T
- 17. Racing Commission.** Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T
- 18. Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted

from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T

**19. Simulcast Operator.** A person licensed by the Racing Commission to operate a simulcast wagering system as provided for by these rules. (11-12-08)T

**011. ABBREVIATIONS.**  
There are no abbreviations used in these rules. (11-12-08)T

**012. -- 014. (RESERVED).**

**015. GENERAL AUTHORITY.**

**01. Racing Commission to Regulate Races and Participation.** The Racing Commission will regulate each race meet and the persons who participate in each race meet. (11-12-08)T

**02. Racing Commission to Regulate Simulcast and Advance Deposit Wagering.** The Racing Commission will license and regulate all simulcast operators and activities and advance deposit wagering and activities. (11-12-08)T

**03. Racing Commission to Delegate Powers.** Pursuant to the authority granted in Section 54-2501, Idaho Code, the Racing Commission may delegate to the executive director and the stewards or judges all powers and duties necessary to fully implement the purposes of Section 54-2501, Idaho Code. (11-12-08)T

**016. COSTS AND ANNUAL REPORT.**

**01. Audited and Approved.** Costs necessary to administer the Racing Commission must be audited and approved by the Racing Commission. (11-12-08)T

**02. Annual Report.** The Racing Commission will submit an annual report covering all business transactions and financial statements to the Governor no later than March 31st of each year. (11-12-08)T

**017. -- 019. (RESERVED).**

**020. MEETINGS.**  
The Racing Commission will meet at the call of the chair or a majority of the members, or as otherwise provided by statute. Notice of the meetings must be given and the meetings must be conducted in accordance with Idaho's Open Meeting Act, Section 67-2340 through 67-2347, Idaho Code. (11-12-08)T

**021. MEMBER AS A CHAIRMAN.**  
The Racing Commission will organize by electing one (1) of its members as a chairman. (11-12-08)T

**022. QUORUM MAJORITY.**  
A majority of Commissioners is a quorum. A Racing Commission member may not act in the name of the Racing Commission on any matter without a majority vote of a quorum of the Racing Commission. (11-12-08)T

**023. (RESERVED).**

**024. HORSEMEN'S GROUP.**  
For purposes of these rules, whichever group was the recognized horsemen's group in 2004 is hereby designated as the existing horsemen's group. (11-12-08)T

**01. Decertifying an Existing Horsemen's Group - Notice of Intent and Petition.** Upon the filing with the Racing Commission of a notice of intent to decertify an existing horsemen's group by an alternate horsemen's group, the alternate horsemen's group has no more than six (6) months from the date of filing to acquire, on a petition, the signatures of twenty-five percent (25%) of the existing horsemen's group's licensed members. (11-12-08)T



- a.** Contents of Notice. The notice of intent shall contain the following: (11-12-08)T
- i.** The name of the alternate horsemen's group; (11-12-08)T
- ii.** The names of the principals of the horsemen's group; (11-12-08)T
- iii.** The date of filing; (11-12-08)T
- iv.** The articles of incorporation and bylaws; and (11-12-08)T
- v.** A copy of the petition as it will be circulated. (11-12-08)T
- b.** No more than one (1) petition by any alternate horsemen's group to decertify an existing horsemen's group will be circulated at any given time. (11-12-08)T
- c.** In addition, the alternate horsemen's group must submit the names of a minimum of fifty (50) members who must be Idaho licensed owners or trainers. (11-12-08)T
- 02. Racing Commission's Receipt of Petition.** (11-12-08)T
- a.** Upon receipt of a petition that meets the criteria set forth in Subsection 024.01 of these rules, the Racing Commission will consider the petition and will validate the signatures found on said petition. Validation includes, but is not limited to, verification of current Idaho licensed owners and trainers and signature verification. (11-12-08)T
- b.** If the validated signatures do not meet the requirements of these rules, the Racing Commission will notify the alternate and the existing horsemen's groups that no further action will be taken on the petition. (11-12-08)T
- 03. Validating Signatures, Setting of Election Date, Conducting an Election.** (11-12-08)T
- a.** If the validated signatures are found to meet these requirements, the Racing Commission will set the date for the election prior to the next regularly scheduled meeting. (11-12-08)T
- b.** A representative of the alternate horsemen's group must appear to answer any questions at the meeting at which signatures are validated. (11-12-08)T
- c.** The existing horseman's group must conduct an election among the licensed members. The election results must be reported to the Racing Commission. (11-12-08)T
- d.** A deciding vote of fifty percent plus one (50% + 1) of the ballots returned must be used to determine the one organization to be recognized as the horsemen's group, absent clear and convincing evidence that the election was fraudulent. (11-12-08)T
- 04. Good Cause.** Except for good cause, the Racing Commission will not conduct an election within eighteen (18) months of a prior election among the existing group's licensed members. (11-12-08)T
- 025. (RESERVED).**
- 026. PROHIBITED ACTS.**  
The Commissioners and Racing Commission employees must not: (11-12-08)T
- 01. Financial Interest.** Own a financial interest in a racing association or simulcast operation located in Idaho. (11-12-08)T
- 02. Accept Remuneration.** Accept remuneration from a racing association or simulcast operation

located in Idaho. (11-12-08)T

**03. Owner, Lessor or Lessee.** Be an owner, lessor or lessee of a horse or a mule that is entered in a race at a licensed race meet in Idaho. (11-12-08)T

**04. Wager.** Commissioners and Racing Commission employees must not wager in any pari-mutuel pool at any facility or through any pari-mutuel system in the State of Idaho. (11-12-08)T

**027. -- 029. (RESERVED).**

**030. POWER OF ENTRY.**  
Members of the Racing Commission will have the right to enter and inspect any part of the grounds and facilities of the racing association or simulcast operator. (11-12-08)T

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

**035. EXCLUSION.**  
The Racing Commission may order an individual excluded from all or part of any racing association or simulcast operator's grounds under the statutory jurisdiction of the Racing Commission if the stewards or judges or executive director of the Racing Commission determine that: (11-12-08)T

**01. Deemed to Be Detrimental.** The individual is deemed to be detrimental to the best interest of racing or is in violation of Section 54-2509, Idaho Code, or these rules. (11-12-08)T

**02. Honesty and Integrity.** The individual's presence on a racing association or simulcast operator's grounds is inconsistent with maintaining the honesty and integrity of racing. (11-12-08)T

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

**040. ALLOCATION OF RACE DAYS AND RACES.**  
The Racing Commission is the sole judge of the number of race days and races for which each racing association is licensed. (11-12-08)T

**041. PUBLIC HEALTH OR SAFETY HAZARD.**  
Nothing in these rules is intended to require race days and races to be held if it constitutes a public health or safety hazard. (11-12-08)T

**042. CANCELLATION OF RACE DAYS OR RACES.**  
Racing days or races within a racing day specified on a racing association's license may be cancelled under the following conditions: (11-12-08)T

**01. Conditions.** Conditions at the racing facility constitute a health or safety hazard for people using the facility. (11-12-08)T

**02. Inclement Weather.** Inclement weather or track conditions constitute a health or safety hazard for track personnel or horses entered to race. (11-12-08)T

**03. Approved Cancellation.** The Racing Commission approved the cancellation due to a health or safety hazard. (11-12-08)T

**04. Advanced Approval.** Races cancelled for any reason other than a health or safety hazard must be approved in advance by the Racing Commission. (11-12-08)T

**05. Rescheduling Cancelled Races.** The Racing Association will make a good-faith effort to reschedule cancelled races. (11-12-08)T

**043. -- 999. (RESERVED).**

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This 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 15, 2008.

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:

Modifies the requirements for Canine Evaluators so a letter of recommendation comes from the agency administrator rather than an Idaho POST-certified canine evaluator, and requires an evaluator to evaluate a minimum of four dogs every two years in order to retain certification; increases the amount of training that canine teams must complete in order to be POST-certified; establishes the requirements for becoming a POST-certified canine instructor; and removes the general subjects of detention, dispatch, and K-9 from the list of high liability subjects for Master Instructor certification.

**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 Section 67-5220, Idaho Code, 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 22, 2008.

DATED this 15th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-0801

**210. CANINE EVALUATOR CERTIFICATION.**

**01. Purpose.** Canine Evaluator Certificates are established for the purpose of recognizing competence as an evaluator of police canine teams. (4-11-06)

**02. Certification.** The Council will certify applicants who meet the requirements set forth in this section and are deemed qualified by their training and experience to evaluate police canine teams. Certificates will be issued in the areas of Patrol, Tracking, Evidence Search, Controlled Substance Detection, and Explosive Substance Detection. The applicant must show training and experience in each area he is requesting certification in. Certificates will be issued to the agency head for award to the applicant. (4-11-06)

**03. Revocation.** Canine Evaluator certification may be revoked by the Council whenever a canine evaluator is deemed to be unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-11-06)

**04. Eligibility.** To be eligible for the award of a Canine Evaluator Certificate, each applicant must meet the following POST requirements: (4-11-06)

**a.** Be a POST-certified or federally commissioned peace, detention, correction, or adult probation and parole officer who is actively involved in a law enforcement canine program; (4-11-06)

**b.** Have three (3) years of canine handler experience; (4-11-06)

**c.** Have three hundred ninety (390) hours of POST-certified or federally-approved canine-related training; (4-11-06)

**d.** Successfully complete the Idaho POST-certified Canine Evaluators course; (4-11-06)

**e.** Evaluate seven (7) dogs while under supervision of a current Idaho POST-certified canine evaluator; and (4-11-06)

**f.** Submit an Idaho POST Canine Evaluator Application Packet to POST Council, which must include: (4-11-06)

**i.** Transcripts, certificates, diplomas, or other documents that substantiate the applicant's education and training in the canine field; and (4-11-06)

**ii.** A letter of recommendation from ~~a current Idaho POST-certified canine evaluator~~ an administrator within the applicant's employing agency. (4-11-06)( )

**05. Retaining Certification.** To retain certification, a certified canine evaluator must evaluate a minimum of four (4) dogs every two (2) years. Any canine evaluator not satisfying this requirement must complete all requirements as set forth in Section 210 of these rules to be recertified. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**213. GENERAL PROVISIONS.**

**01. Mandatory Certification.** A canine team must be Idaho-POST certified in order to perform their duties unless the team is POST-certified in another state or approved by the federal government, in which case they will have six (6) months from the date the canine is put into service in Idaho to obtain Idaho POST certification. The Council, for good cause and in writing, may grant additional time to complete POST certification. (4-11-06)

**02. Eligibility.** The canine handler must be an Idaho POST-certified peace, detention, correction, or adult probation and parole officer to be eligible for certification under these rules. (4-11-06)

**03. Notification of Canine Being Put Into Service.** Prior to a canine being put into service, the law enforcement agency head must submit written notification to the Council of such pending action unless the canine team is POST-certified in another state or approved by the federal government, in which case notification must be submitted within fifteen (15) days of the canine being put into service in Idaho. (4-11-06)

**04. Training.** (4-11-06)

**a.** A patrol canine handler must have completed ~~one two hundred sixty four~~ (~~#6240~~) hours of POST-approved canine handler training. The training must include, but not be limited to: (~~4-11-06~~)(\_\_\_\_)

i. Suspect search; (4-11-06)

ii. Apprehension; (4-11-06)

iii. Handler protection; (4-11-06)

iv. Obedience; and (4-11-06)

v. Agility. (4-11-06)

**b.** A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler must have completed ~~eighty one hundred sixty~~ (~~#160~~) hours of POST-approved canine handler training. The training must include, but not be limited to: (~~4-11-06~~)(\_\_\_\_)

i. Obedience; and (4-11-06)

ii. Odor recognition specific to the area the canine team is seeking certification in. (4-11-06)

**c.** A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler cross-trained as a patrol canine handler must have completed two hundred forty (240) hours of POST-approved canine handler training ~~as set forth in Subsections 213.04.a. and 213.04.b.~~ (~~4-11-06~~)(\_\_\_\_)

**05. Evaluation.** In evaluating the proficiency of the canine teams, the evaluators must use the standards approved by the POST Council for that particular skill category. Performance will be rated on a pass/fail basis. The evaluator will have the discretion to discontinue the testing if excessive time has been spent without results. The evaluator must not be the owner or handler of the canine being evaluated, and must not have a proprietary interest in the training of the canine team being evaluated. A POST Training Specialist must be notified of all canine certification testing. (4-11-06)

**06. Failed Evaluation.** If a canine team fails any portion of an evaluation, the entire evaluation is considered to be failed, and all skills must be repeated and successfully demonstrated during retesting. The canine team must wait at least twenty-four (24) hours before retesting, and they must be retested by the same evaluator that evaluated the failed test or his designee. (4-11-06)

**07. Areas of Certification.** The Council will certify a canine team which successfully demonstrates the handler's ability to control the canine, under the scrutiny of a canine evaluator, in addition to proficiency in one (1) or more of the following areas: (4-11-06)

**a.** Patrol; (3-30-01)

**b.** Tracking; (3-30-01)

**c.** Evidence search; (3-30-01)

- d. Controlled substance detection; or (3-30-01)
- e. Explosive substance detection. (3-30-01)

**08. Expiration of Certification.** Each certification issued pursuant to these rules will remain valid for fifteen (15) months. A canine team must be evaluated prior to their certification expiration date to maintain their certification. A canine team certification will lapse if the handler and canine cease to perform canine team functions together. (4-11-06)

**09. Appeal.** Any handler who believes there have been improper procedures applied in implementing the standards may file an appeal with the Idaho Peace Officer Standards and Training Academy in writing. This appeal must be filed within thirty (30) days of the testing date. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**257. -- 2659. (RESERVED).**

**260. CANINE INSTRUCTOR CERTIFICATION.**

Canine Instructor Certificates are established for the purpose of recognizing competence as an instructor of canine subjects pertinent to law enforcement personnel. ( )

**261. REQUIREMENTS.**

In addition to the requirements set forth in Sections 251 and 252 of these rules, the requirements in Sections 261 and 262 are necessary for award of the canine instructor certificate: ( )

**01. Instructor Development Course.** The applicant must have satisfactorily completed an Instructor Development Course approved by the Council. ( )

**02. Canine Instructor School.** The applicant must have satisfactorily completed a Canine Instructor School approved by the Council. ( )

**03. Handler in Specific Discipline.** The applicant must have served a minimum of five (5) years as a handler in the specific discipline. ( )

**04. Annual Certifications.** The applicant must have a minimum of five (5) annual certifications in the specific discipline. ( )

**05. Canine Training.** The applicant must have received a minimum of six hundred eighty (680) hours of canine training. ( )

**06. Recommendation.** The applicant must be recommended for canine instructor certification by a selection committee comprised of a POST Training Specialist and two (2) POST-certified canine instructors. ( )

**262. PROCEDURES.**

**01. Application.** After meeting the requirements set out in Section 261 of these rules, the applicant must submit a completed Certified Instructor Packet to POST. ( )

**02. Maintain Certification.** To maintain certification, a POST-certified canine instructor must teach a minimum of forty (40) hours every two (2) years in the specific discipline they are certified to teach. ( )

**263. EXPIRATION AND RENEWAL.**

- 01.     Expiration.** Canine instructor certification will remain valid for a period of two (2) years.     (\_\_\_\_)
- 02.     Notification.** At the end of the certification period, the POST Council will send notification to the instructor, provided the instructor still meets the qualifications for instructor certification.     (\_\_\_\_)
- 03.     Requirements.** To renew the certification, the instructor must submit the following to POST Council:     (\_\_\_\_)
- a.     A teaching log indicating the instruction of at least forty (40) hours during the last certification period; and**     (\_\_\_\_)
- b.     An updated lesson plan, if any changes have been made since it was last submitted.**     (\_\_\_\_)
- 264. -- 265.     (RESERVED).**

**266.     MASTER INSTRUCTOR CERTIFICATION.**

Master Instructor Certificates are established for the purpose of recognizing competence as an instructor of instructors of law enforcement subjects and/or general subjects pertinent to law enforcement personnel, especially high liability subjects such as Arrest Techniques, ~~Detention, Dispatch,~~ DUI, Emergency Vehicle Operation, Firearms, Impact Weapons, Instructor Development, ~~K-9,~~ and Weapons Retention.     (4-2-03)(\_\_\_\_)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0801

### 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 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 15, 2008.

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:

Adopt a self-certification rule allowing a disabled applicant to self-certify that they are capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment; amend rules so that required documentation in the disability license and motor vehicle permit rules are correctly referenced; and adopt a definition of 'physician.' Amend the lifetime license application to streamline the process. Adopt a rule to allow reasonable accommodations for persons with disabilities in special weapon hunts.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0801



**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 disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code, *and one who is capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment.* (4-2-08)(\_\_\_\_)

**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(~~7-1-93~~), Idaho Code. (~~7-1-93~~)( )

**10. Physician.** A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. ( )

**011. -- 099. (RESERVED).**

**100. RESIDENT LIFETIME COMBINATION, HUNTING AND FISHING LICENSE CERTIFICATES.**

**01. General.** A resident of Idaho, upon payment of the fee required in Section 36-413, Idaho Code, may receive a lifetime combination, hunting, or fishing license certificate under the conditions set forth in the following rules. (7-1-93)

**02. Applications.** Applications shall be made on a form prescribed by the Department and may be submitted either in person or by mail. Applications must be completed with all the requested information and accompanied by the documents described below. Applications may be submitted in person to any Idaho Department of Fish and Game office. Applications submitted by mail must be sent only to the Headquarters office at P.O. Box 25, Boise, ID 83707. Lifetime license certificates will be issued from the IWILD system at IDFG Regional or Headquarters offices only. (~~7-1-93~~)( )

**03. Required Documentation -- Submitted in Person.** Applications submitted in person must be supported by the following: (7-1-93)

**a.** Idaho Driver's License for all persons who drive. (7-1-93)

**b.** ~~Idaho Identification Card for persons who do not drive or who are fourteen (14) years of age or over who have not been issued a driver's license.~~ Nondriver's may use other suitable proof of residency, such as: (~~7-1-93~~)( )

**i.** Idaho Identification Card issued by the Idaho Transportation Department; or ( )

**ii.** Two (2) documents bearing the applicant's name and address, not issued by the applicant, such as: ( )

**(1)** Rent receipts or mortgage statements for previous six (6) months; ( )

**(2)** Home utility bills for previous six (6) months; ( )

**(3)** A notarized statement from an employer on business letterhead; ( )

**(4)** Proof of voter registration dated six months prior; ( )

**e(5).** Birth Certificate for persons under fourteen (14) years of age. (7-1-93)

**04. Required Documentation -- Submitted by Mail.** Applications submitted by mail must be accompanied by the following: (7-1-93)

**a.** Certified copy of the applicant's birth certificate if under the age of fourteen (14). (7-1-93)

- b. Notarized copy of the applicant's Idaho Driver's License for persons who drive. (7-1-93)
- c. Notarized copy of the applicant's ~~Idaho Identification Card if the applicant does not drive or is fourteen (14) years of age or over and has not been issued a driver's license.~~ (7-1-93)(    )
  - i. Idaho Identification Card issued by the Idaho Transportation Department; or (    )
  - ii. Two (2) documents bearing applicant's name and address, not issued by the applicant, such as: (    )
    - (1) Rent receipts or mortgage statements for previous six (6) months; (    )
    - (2) Home utility bills for previous six (6) months; (    )
    - (3) A notarized statement from an employer on business letterhead; (    )
    - (4) Proof of voter registration dated six (6) months prior. (    )

**05. Proof Verification of Idaho Residency.** ~~Certificates shall not be issued to applicants who do not submit an Idaho driver's license or Idaho identification card unless other adequate documentation is submitted showing that the person is a resident of Idaho. Such documentation may include voters registration, evidence of payment of resident tuition at an Idaho school or a resident Idaho income tax return filed for the previous year. Residency of applicants under the age of fourteen (14) years of age may be shown by the residency of his or her parents.~~ The Department ~~shall~~ may investigate and verify that the information submitted by the applicant is true and correct and that the applicant is an Idaho resident. (7-1-93)

**06. Purchases for Other Persons.** If the lifetime license certificate is being purchased for a person other than the one submitting the application, the purchaser must certify that the intended recipient of the lifetime license certificate meets the residency requirements set forth in Subsection 36-202(~~rs~~), Idaho Code. If the lifetime license recipient is an infant under the age of six (6) months, the parent(s) must meet the minimum residency requirements. (7-1-93)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. DISABILITY LICENSES.**

Disabled Combination Hunting/Fishing, Disabled Fishing, Disabled American Veterans Combination Hunting and Fishing License and Disabled American Veterans Fishing License. (3-8-07)

**01. Applicants for Disability Licenses Must Attest to the Disability Requirements.** It is a violation for any person to misrepresent any information to obtain a disability license. (3-8-07)

**02. Required Documentation.** Required documentation must be submitted in person or by mail to the Department of Fish and Game set forth in Section 005 of this rule. Applications must be supported by the documentation noted in either Subsection 302.02.a., ~~or~~ 302.02.b., or 302.02.c. of this rule. (~~3-8-07~~)(    )

- a. License buyer must present, to an Idaho Department of Fish and Game office or select vendor one (1) of the following: (3-8-07)
  - i. A current year's award statement in the individuals name showing that he or she is receiving SSI or SSDI benefits for the current year; (3-8-07)
  - ii. A letter from the Railroad Retirement board verifying disability status and being dated within three years preceding the application for a disabled license; (3-8-07)

iii. A letter from the from the Veterans Affairs office ~~showing a percentage of disability of 40 percent (40%) or greater; verifying a service-connected disability rating of forty percent (40%) or greater. Such documentation can bear any date prior to license application. Such documentation will be required only for the initial application and will not be required for subsequent disability license application.~~ (3-8-07)(\_\_\_\_)

iv. A current year's letter from the Veterans Affairs office showing an individual is receiving a nonservice-connected pension. (3-8-07)(\_\_\_\_)

b. License buyer must initially present to an Idaho Fish and Game office a form, prescribed by the Department, showing physician certification of permanent disability, defined in Subsections 010.04 and 010.08 of this rule, or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. Physician certification will not be required for subsequent disability license application. (3-8-07)

c. Individuals using the department form for a physician's permanent disability certification must complete and sign the application form. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Subsection 010.04 of this rule, qualifies the applicant and why. ~~The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment.~~ If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for a permanent disability on the application. (3-8-07)(\_\_\_\_)

### **303. DISABLED PERSONS MOTOR VEHICLE HUNTING PERMITS.**

#### **01. Applications for Disabled Motor Vehicle Hunting Permits. (4-2-08)**

a. Applications for 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. (4-2-08)

b. Individuals using the department form for a 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 applicant shall also certify that the applicant is capable of holding and firing, without assistance from other persons, 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. (4-2-08)(\_\_\_\_)

#### **02. Disabled Motor Vehicle Hunting Permits. (4-2-08)**

a. 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.(4-2-08)

b. The permit shall be prominently displayed on any vehicle from which the person is hunting. Where applicable, the permit shall be displayed on the driver's side of the dashboard of the parked vehicle, suspended from the rearview mirror, or otherwise displayed so as to be in plain view of any person looking through the windshield of the vehicle. (7-1-93)

### **304. HANDICAPPED ARCHERY PERMIT.**

**01. Applications for Handicapped Archery Permits. (3-20-97)**

**a.** Applications for handicapped archery permits shall be on a form prescribed by the Department. Only eligible applicants may submit such applications. (3-20-97)

**b.** Applicants shall sign the application. Nonresident applicants must have their signature notarized. Each application shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating that the applicant has a permanent disability whereby he does not have use of one (1) or both of his arms or hands. The ~~physician, physician assistant, or nurse practitioner~~ applicant shall ~~also~~ certify that the applicant is capable of holding and firing, without assistance from other persons, a bow or crossbow. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner medical license must accompany the application. ~~(3-8-07)~~( )

**02. Handicapped Archery Permits. (3-20-97)**

**a.** Handicapped archery permits shall be issued only by the Director of the Department and shall expire on December 31 of the fifth year following the date of issuance. (3-20-97)

**b.** The handicapped archery permit shall be carried on the person of anyone participating in an archery only season with the use of a crossbow and produced upon request on an officer. (3-20-97)

**c.** The handicapped archery permit shall allow the holder thereof to participate in an archery only hunt with the use of a crossbow or a device attached that holds a bow at partial or full draw. (3-8-07)

**305. REASONABLE MODIFICATION PERMIT FOR SPECIAL WEAPON HUNTING SEASONS.**

**01. Applications for Reasonable Modification Permits for Special Weapon Hunting Seasons. ( )**

**a.** Applications for reasonable modification permits shall be on a form prescribed by the Department. ( )

**b.** Individuals using the department form for a reasonable modification 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 the criteria limiting the applicant's ability to participate without special accommodation. The applicant shall certify that the applicant is capable of holding and firing, without assistance from other persons, legal firearms or archery equipment. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, 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. ( )

**c.** Individuals must identify the equipment accommodation requested, and explain how the requested accommodation will allow them to participate in the special weapon hunt without enhancing their abilities beyond the limitations and purpose of the special weapon hunt. ( )

**02. Reasonable Modification Permits for Special Weapon Hunting Seasons. ( )**

**a.** Reasonable modification 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. ( )

**b.** The accommodation must be reasonable and must be consistent insofar as possible with all provisions guiding other participants in the special weapon hunting season. For example, persons with a focusing disability (focal plane) could request the use of optical sighting device without magnification (e.g., sighting devices

that magnify the target are expressly prohibited for Archery Only, Traditional Archery Only, and Muzzleloader seasons by Rule 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Section 410). The Director or his representative shall determine if the requested accommodation is reasonable, and may deny the application or set a modification different from the modification requested. ( )

- c. A copy of the permit shall be carried by the person while hunting in any special weapon hunt. ( )

**3056. -- 399. (RESERVED).**

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.04 - RULES GOVERNING LICENSING**

**DOCKET NO. 13-0104-0802**

**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 36-104(b), 36-409A 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 15, 2008.

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:

Replace the term "handicapped" with "disabled" to ensure consistency with governing law.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2008 hunting seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0802**

**304. ~~HANDICAPPED~~ DISABLED ARCHERY PERMIT.**

**01. Applications for ~~Handicapped~~ Disabled Archery Permits. ~~(3-20-97)~~(\_\_\_\_)**

**a.** Applications for handicapped archery permits shall be on a form prescribed by the Department. Only eligible applicants may submit such applications. (3-20-97)

**b.** Applicants shall sign the application. Nonresident applicants must have their signature notarized. Each application shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating that the applicant has a permanent disability whereby he does not have use of one (1) or both of his arms or hands. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding and firing, without assistance from other persons, a bow or crossbow. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner medical license must accompany the application. (3-8-07)

**02. ~~Handicapped~~ Disabled Archery Permits. ~~(3-20-97)~~(\_\_\_\_)**

**a.** ~~Handicapped~~ Disabled archery permits shall be issued only by the Director of the Department and shall expire on December 31 of the fifth year following the date of issuance. ~~(3-20-97)~~(\_\_\_\_)

**b.** The ~~handicapped~~ disabled archery permit shall be carried on the person of anyone participating in an archery only season with the use of a crossbow and produced upon request on an officer. ~~(3-20-97)~~(\_\_\_\_)

**c.** The ~~handicapped~~ disabled archery permit shall allow the holder thereof to participate in an archery only hunt with the use of a crossbow or a device attached that holds a bow at partial or full draw. ~~(3-8-07)~~(\_\_\_\_)



**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.04 - RULES GOVERNING LICENSING**

**DOCKET NO. 13-0104-0803**

**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 36-104(b), 36-408, and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Set outfitter set-aside tags for the 2008 seasons. Set outfitter allocation tags proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. Add a separate additional 1,500 white-tail deer nonresident tag quota. Consider reducing the elk tag cap for Selway A and B tags for resident and nonresident hunters.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with license sale deadlines and printing schedules for the 2008 hunting seasons.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact 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 22, 2008.

DATED this 20th day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0803**

**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 White-tailed); (4-2-08)

~~**b.** Eighty-five (85) S.E. Idaho Area deer tags; (3-20-04)~~

**eb.** 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)

**(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 White-tailed deer tags; (4-2-08)

**b.** Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones; (3-20-04)

**c.** One thousand ~~two~~ five hundred (1,2500) ~~S.E. Idaho area~~ White-tailed 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)

**601. ELK ZONE TAG QUOTAS.**

Zone	Units	Total Tags	General Resident Tags	General Nonresident Tags	Outfitter Allocation
Lolo B Tags	10,12	1600	1008	356	236
<u>Selway A Tags</u>	<u>16A, 17, 19, 20</u>	<u>647</u>	<u>179</u>	<u>254</u>	<u>214</u>
Selway B Tags	16A, 17, 19, 20	<del>4255</del> <u>1067</u>	<del>565</del> <u>480</u>	<del>334</del> <u>284</u>	<del>356</del> <u>303</u>

Middle Fork A Tags	20A, 26, 27	1551	1168	174	209
Middle Fork B Tags	20A, 26, 27	1636	925	267	444
<del>Boise River B Tags</del>	<del>39</del>	<del>3,300</del>	<del>3,013</del>	<del>269</del>	<del>48</del>
<u>Elk City B Tags</u>	<u>14, 15, 16</u>	<u>1790</u>	<u>1414</u>	<u>326</u>	<u>50</u>
<u>Dworshak B Tags</u>	<u>10A</u>	<u>2380</u>	<u>2118</u>	<u>215</u>	<u>47</u>

(3-15-02)( )

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS

DOCKET NO. 13-0107-0801

#### 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 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 15, 2008.

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:

Amend the rule to ensure consistency in references to the Disabled Motor Vehicle Hunting Permit.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2008 hunting seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the 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 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0107-0801

**101. MOTORIZED VEHICLE USE RESTRICTIONS.**

The use of motorized vehicles by hunters as an aid to hunting upland game animals is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders; including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code. (4-6-05)

**01. Use Restriction.** In designated areas and hunts, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. Any other use by hunters is prohibited. All off-road use by hunters is prohibited. (4-6-05)

**02. Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses: (4-6-05)

**a.** Holders of a valid ~~Handicapped Persons~~ Disabled Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager. (~~4-6-05~~)(    )

**b.** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager. (4-6-05)

**c.** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment. (4-6-05)

**d.** Private landowners, their authorized agents and persons with written landowner permission may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code. (4-6-05)

**03. Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation and Upland Game Season Proclamation, which are published in a brochure available at department offices and license vendors. (4-6-05)

**04. Defined Terms.** (4-6-05)

**a.** A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (4-6-05)

**b.** An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)

**c.** A hunter shall be defined as a person engaged in the activity of hunting as defined in Section 36-202(j), Idaho Code. (4-6-05)

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS**

**DOCKET NO. 13-0107-0802P**

**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 2008-2009 and 2009-2010 Upland Game Seasons establishing seasons and limits for upland game hunting (rabbits and hares) in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 pm**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

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 ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0801

#### 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 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 15, 2008. A number of public hearings have already occurred.

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 Wolf Management Plan calls for maintaining viable wolf populations at or near current levels of 500-700 wolves. The proposed rules allow hunting of wolves pursuant to seasons set by the Commission.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2008 hunting seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Chris Wright (208) 287-2759.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0801



**200. BAG AND POSSESSION LIMITS.**

No person may take more than one (1) deer, elk, antelope, moose, bighorn sheep, mountain goat, ~~or~~ black bear, or wolf during a calendar year EXCEPT: (7-1-93)(      )

**01. Depredation Hunts.** In depredation hunts, one (1) additional deer, elk or antelope may be taken by persons holding permit/tags for those hunts, EXCEPT those depredation hunt permittees who were selected for depredation hunts prior to the controlled season for the unit(s) in which they hold a controlled hunt permit must include any animal they harvest within the restrictions imposed by the controlled hunt permit (no person may take more than one (1) animal per year by using depredation and controlled hunt permit). (7-1-93)

**02. Extra Tag Hunts.** In extra tag hunts, one (1) additional deer, elk or antelope may be taken by persons holding tags for those hunts. (7-1-93)

**03. Limits on Take -- Deer, Elk, Antelope.** In no event shall any person take more deer, elk or antelope in a calendar year than the number of tags they legally possess for each species. (3-30-01)

**04. Limits on Take -- Mountain Lion.** No person may take more mountain lions during a calendar year than the number of tags they legally possess for mountain lions. (3-30-01)

**05. Limits on Take - Black Bear.** No person may take more black bears during a calendar year than the number of tags they legally possess for black bears. (3-30-01)

**06. Limits on Take -- Gray Wolf.** No person may take more gray wolves during a calendar year than the number of tags they legally possess for gray wolves. (      )

**201. -- 249. (RESERVED).**

**250. TAGS AND PERMITS.**

No person shall hunt big game animals without having in possession the appropriate hunting license, tags, stamps and permits. (7-1-93)

**01. Use of Tags.** (7-1-93)

**a.** Permit/Tags issued for moose, bighorn sheep, mountain goat and antelope may be used only in the controlled hunt for which the permittee was drawn. (7-1-93)

**b.** Tags issued for antelope archery hunts may be used only in general archery hunts. (7-1-93)

**c.** Extra tags issued for deer, elk or antelope may be used only in the hunt area for which the tags are issued. (7-1-93)

**d.** Any person who purchases a tag to hunt black bear, or archery antelope, who is unsuccessful in killing an animal, and who is subsequently drawn for a controlled hunt permit, including an antelope landowner preference permit, must return the unused tag to a Department office not later than August 10 to exchange the tag for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-20-97)

**e.** Tags issued for black bear and mountain lion may be used statewide. Extra tags issued for black bear and mountain lion may be used only in the hunt area for which the tags are issued. (4-5-00)

**f.** Regular tags issued for deer and elk may be used ONLY as follows: (7-1-93)

i. Regular Deer:

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident (Type 311)	Any archery, muzzleloader or general deer season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20.
Resident (Type 330)	Extra Any antlerless deer tag season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20.
Senior Resident (Type 330)	Any archery, muzzleloader or general deer season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20.
S.E. Idaho Area Units 75, 76, 77, and 78 Nonresident	To Hunt Deer in Units 75, 76, 77, and 78 you must have your deer tag validated for use in these units. These tags are limited to one thousand two-hundred (1200) nonresident tags and will be issued by lottery. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20
Nonresident (Type 411)	Any archery, muzzleloader or general deer season or controlled hunt for which the permittee was drawn, or may be used to tag a black bear or mountain lion during the Regular deer season when the black bear or mountain lion season is open.
Combination Controlled Hunt Permit and Tag	Only the designated controlled hunt for which the permittee was drawn.
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee was drawn.
Combination Controlled Hunt Permit and Extra Tag	Only the designated controlled extra tag hunt for which the permittee was drawn.

(4-6-05)

ii. Clearwater Deer.

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident Clearwater	To hunt deer in any archery, muzzleloader or general deer season in Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20. These tags are valid only in the Clearwater Region units, and Regular Deer tags are not valid in these units.
Resident Extra Clearwater	To hunt an extra any-antlerless deer tag season in Units 8, 8A, 10A, 11A, 14, and 15. These tags are valid only in the Clearwater Region units, and Regular Deer tags are not valid in these units.
Senior Resident Clearwater	To hunt deer in any archery, muzzleloader or general deer season in Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20. These tags are valid only in the Clearwater Region units, and Regular Deer tags are not valid in these units.
Nonresident Clearwater	To hunt deer in any archery, muzzleloader or general deer season or controlled hunt for which the permittee was drawn in Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20. These tags are valid only in the Clearwater Region and may be used to tag a black bear or mountain lion during the Clearwater deer season when the black bear or mountain lion season is open. Regular Deer tags are not valid in these units.

- iii. Elk A Tag: Valid only for A Tag elk seasons in specific elk zones. (4-6-05)

TYPE OF TAG	SEASONS
Resident	Any elk archery, muzzleloader or general season in A Tag elk seasons in specific zones.
Senior Resident	Any elk archery, muzzleloader, or general season in A Tag seasons in specific zones.
Nonresident	Any elk archery, muzzleloader, or general season in A Tag elk seasons in specific zones, or controlled hunt for which the permittee was drawn.
Combination Controlled Hunt Permit and Tag	Only the designated controlled hunt for which the and Tag permittee was drawn.
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee was drawn.
Combination Controlled Hunt Permit and Extra Tag	Only the designated controlled extra tag hunt for which the permittee was drawn.

(4-6-05)

- iv. Elk B Tag: Valid only for B Tag elk seasons in specific elk zones.

TYPE OF TAG	SEASONS
Resident	Any archery, muzzleloader, or general in B Tag elk seasons in specific zones.
Senior Resident	Any archery, muzzleloader, or general in B Tag elk seasons in specific zones.
Nonresident	Any elk controlled hunt for which the permittee was drawn or any archery, muzzleloader, or general in B Tag elk seasons in specific zones.
Combination Controlled Hunt Permit and Tag	Only the designated controlled hunt for which the permittee was drawn.
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee was drawn.
Combination Controlled Permit and Extra Tag	Only the designated controlled and extra tag hunt for which the permittee was drawn.

(4-6-05)

- v. Super Tag.

TYPE OF TAG	SEASONS
Combination Controlled Hunt Permit and "Super" Tag	Valid for either antelope, deer or elk and allows the hunter to hunt in any open and/or controlled hunt for the selected species.

(3-15-02)

- g. Nonresident Junior Mentored Deer tags are not valid for bear, ~~or~~ mountain lion, or gray wolf. (4-6-05)( )

**h.** Any person hunting with a Nonresident Junior Mentored License or tag must be accompanied in the field by an adult license holder close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (4-6-05)

**i.** Any adult accompanying the holder of a Nonresident Junior Mentored Tag must have a tag for the same species, valid in the same area. (4-6-05)

**j.** Regular tags issued for gray wolf may be used ONLY as allowed by the gray wolf seasons and quotas set by Commission proclamation under Section 36-105(3), Idaho Code. The proclamation is published in a brochure available at Department offices and license vendors. ( )

**02. Return of Tags by Unsuccessful Permittees.** Permittees who are not successful in killing a bighorn sheep, mountain goat or moose shall present or mail their unused tags to a Department office within ten (10) days after the close of the season for which the tag was valid. Canceled tags will be returned to the hunter upon request. (5-15-95)

**03. Archery and Muzzleloader Permits.** Any person hunting in an archery only or muzzleloader only season must have the appropriate permit (archery or muzzleloader) for the relevant season validated on their license. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. PERMITS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Permits.** No person may hunt in any controlled hunt without having a valid controlled hunt permit in possession. (7-1-93)

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a permit is issued based on erroneous information, the permit will be invalidated by the Department and may NOT be used. The Department will notify the permittee of the invalidation of the permit. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)

**c.** Any person who receives a controlled hunt permit and tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer. (3-20-97)

**d.** Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)

**e.** Any person who receives a controlled hunt permit for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)

**f.** Any person who receives a combination controlled hunt permit/tag for antelope is prohibited from hunting in any archery antelope hunt. The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)

**g.** Any person who receives a spring controlled hunt permit for black bear is prohibited from hunting in any other spring bear hunt - April 15 to June 30. (7-1-99)

**h.** Any person who receives a fall controlled hunt permit for black bear is prohibited from hunting in

any other fall bear hunts -- September 15 to October 31. (10-26-94)

i. Any person who receives a fall controlled hunt permit for gray wolves is prohibited from hunting in any other fall gray wolf hunts -- October 10 to November 30. ( )

**02. Nonresident Permit Limitations.** (3-20-04)

**a.** In controlled hunts with ten (10) or fewer permits, not more than one (1) nonresident permit will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits, not more than ten percent (10%) of the permits will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)

**b.** Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

**c.** For each species, the total number of outfitter allocated controlled hunt permits shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-20-04)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**a.** Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit for two (2) years. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat permit for two (2) years. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits nor Landowner Preference Permits. EXCEPT all successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope/deer/elk tags to hunt in any open general and/or controlled antelope, deer or elk hunt in the following hunting season. (3-15-02)

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or antelope. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in first-come, first-served deer, elk and antelope controlled hunt permit sales. (~~10-26-94~~)( )

**d.** Any person who has killed a California bighorn ram, Rocky Mountain bighorn ram or a moose on any controlled hunt may not apply for a permit for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit

for five (5) years. The harvest of a bighorn ewe does not make the permittee ineligible to apply for a permit to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit. (7-1-93)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose permit for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit for antlerless moose EXCEPT that any person may apply for permits remaining unfilled after the controlled hunt draw. (4-11-06)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**04. Applications.** Individual applications or group applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (10-26-94)

**a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)

**b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

**c.** Deer, elk, antelope, ~~and~~ fall black bear, gray wolves - Application period for first drawing - May 1 - June 5. (~~3-30-07~~)(    )

**d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

**e.** Deer, elk, antelope, ~~and~~ fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (~~4-6-05~~)(    )

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

**a.** Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt permit/extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (10-26-94)

**b.** Only one (1) controlled hunt permit/extra tag will be issued for each person on any application submitted. (10-26-94)

**c.** Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt permit/tag hunts

or controlled hunt permit/extra tag hunts. (10-26-94)

**d.** Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, antelope, moose, bighorn sheep, mountain goat, black bear, ~~and~~ lion, and gray wolf applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, antelope, black bear, ~~or~~ mountain lion, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a permit tag in the mail. (~~4-6-05~~)(      )

**e.** Any controlled hunt permits, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold forty five (45) days following the close of each respective controlled hunt drawing by any Point-of-Sale vendor on a first-come, first-served basis UNLESS such day is a Sunday, in which case the permits will go on sale the next legal business day. A controlled hunt permit and tag will be issued to successful applicants. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-15-02)

**f.** A "group application" for deer, elk, and antelope is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (10-26-94)

**g.** A "group application" for moose, bighorn sheep, mountain goat, ~~and~~ black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (~~10-26-94~~)(      )

**h.** If a group application exceeds the number of permits available in a hunt that group application will not be selected for that hunt. (7-1-98)

**i.** Landowner permission hunt permits will be sold first-come, first-served basis at the Nampa, McCall and Headquarters offices of the Idaho Department of Fish and Game after July 15. (7-1-98)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Permits.** Successful applicants for the first deer, elk, black bear, gray wolf, or antelope controlled hunt drawing must purchase and pick up their controlled hunt permit and tag by August 1. All controlled

hunt tags and permits not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags and permits left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-6-05)(\_\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN.**

- 01. Big Game Animals of Either Sex.** Big game animals of either sex may be taken as noted below: (7-1-93)
- a.** Mountain Goat. Either sex may be taken EXCEPT nannies accompanied by kids. (7-1-93)
  - b.** Black Bear. Either sex may be taken EXCEPT female black bears accompanied by young. (7-1-93)
  - c.** Mountain Lion. Either sex may be taken EXCEPT spotted young or females accompanied by young. (7-1-93)
  - d.** Gray Wolves. Either sex may be taken. (\_\_\_\_\_)
- 02. Seasons Restricted to Antlered or Male Animals Only.** (7-1-93)
- a.** Deer. Only deer with at least one (1) antler longer than three (3) inches may be taken in any season which is open for antlered deer only. (7-1-93)
  - b.** Two-point deer. Only deer with not more than two (2) points on one (1) antler, not including brow point, and at least one (1) antler longer than three (3) inches may be taken in any season which is open for two-point deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
  - c.** Three-point deer. Only deer having at least one (1) antler with three (3) or more points not counting the brow point or tine may be taken in any season which is open for three-point or larger deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (3-15-02)
  - d.** Four-point deer. Only deer having at least one (1) antler with four (4) or more points, not including the brow point or tine, may be taken in any season that is open for four-point or larger deer only. (4-6-05)
  - e.** Elk. Only elk with at least one (1) antler longer than six (6) inches may be taken in any season which is open for antlered elk only. (7-1-99)
  - f.** Spike elk. Only elk with no branching on either antler and at least one (1) antler longer than six (6) inches may be taken in any season which is open for spike elk only. A branch is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
  - g.** Brow-tined elk. Any elk having an antler or antlers with a visible point on the lower half of either main beam that is greater than or equal to four (4) inches long. (3-15-02)
  - h.** Moose. Only moose with at least one (1) antler longer than six (6) inches may be taken in any season open for antlered moose only. (7-1-93)
  - i.** Bighorn Sheep. Only bighorn sheep rams having three-fourths (3/4) curl or greater horns or exceeding four (4) years of age may be taken in any hunt open for rams only. Determination of a three-fourths (3/4) curl shall be made from a broad side view of the head. A ram shall be considered three-fourths (3/4) curl if an imaginary straight line extending downward from the front of the base of the horn through the center of the eye socket



intersects any portion of the horn. (7-1-93)

**03. Seasons Restricted to Antlerless or Female Animals Only.** (7-1-93)

**a.** Deer. Only deer without antlers or with antlers shorter than three (3) inches may be taken in any season which is open for antlerless deer only. (7-1-93)

**b.** Elk. Only elk without antlers or with antlers shorter than six (6) inches may be taken in any season which is open for antlerless elk only. (7-1-93)

**c.** Antelope. Only antelope without a black "cheek patch" or horns less than three (3) inches long may be taken during doe and fawn only antelope seasons. (7-1-93)

**d.** Bighorn sheep. Only bighorn sheep with horns between six (6) inches and twelve (12) inches in length may be taken in any season which is open for bighorn ewes only. (7-1-93)

**e.** Moose. Only moose without antlers or with antlers less than six (6) inches long may be taken in any season which is open for antlerless moose only. (7-1-93)

**301. -- 319. (RESERVED).**

**320. TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT.**

**01. Tag.** Immediately after any deer, elk, antelope, moose, bighorn sheep, mountain goat, mountain lion, ~~or~~ black bear, or gray wolf is killed, the appropriate big game animal tag must be validated and securely attached to the animal. (7-1-93)(\_\_\_\_)

**a.** Validation. Cut out and completely remove only the two (2) triangles indicating the date and month of kill. (7-1-93)

**b.** Attachment of tag. (7-1-93)

**i.** Deer, elk, antelope, moose, mountain goat, black bear, and bighorn sheep: to the largest portion of the carcass to be retained by the hunter or any person transporting for the hunter. The tag must remain attached during transit to a place of processing and must remain attached until the meat is processed. The validated tag must accompany the processed meat to the place of final storage or final consumption. (10-26-94)

**ii.** Mountain lion and Gray Wolf: To the hide. (7-1-93)(\_\_\_\_)

**02. Proxy Statement.** Any person transporting or possessing any portion of a carcass of a big game animal or processed big game animal meat taken by another must have in possession a written statement signed by the taker showing the number and kinds of animals, the date taken, the taker's name and address, the taker's hunting license number, and the taker's tag and/or permit number. (7-1-93)

**321. -- 349. (RESERVED).**

**350. IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

**01. Evidence of Sex.** Evidence of sex must be left naturally attached to the carcass of any big game animal. (4-6-05)

**a.** In antlered or male only seasons, the evidence of sex requirement is met when the head, horns, or antlers are left naturally attached to the whole carcass or to a front quarter. If the head, horns, or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND the horns or antlers must accompany the carcass while in transit. (7-1-93)

**b.** In spike elk or two-point (2) deer only seasons, the evidence of sex requirement is met when the head with both complete unaltered antlers are left naturally attached to the whole carcass or to a front quarter. If the head or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND both complete unaltered antlers naturally attached to each other must accompany the carcass while in transit. (7-1-93)

**c.** In antlerless, doe/fawn or female only seasons, if the head is removed from female elk, moose, deer, antelope or bighorn sheep, some other external evidence of sex (either udder or the vulva) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption. (7-1-93)

**d.** The entire head of antlerless male elk, moose, deer, or antelope or a male lamb bighorn sheep killed during an antlerless, female, doe/fawn or ewe only season, may be left naturally attached to the carcass or to a front quarter until the carcass reaches the final place of storage or consumption. If the head is removed, some other external evidence of sex (either scrotum, penis, or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, AND the lower jaw must accompany the carcass while in transit. (7-1-93)

**e.** For black bear, ~~and~~ mountain lion, and gray wolf, external evidence of sex (either scrotum, penis or testicles for males, or vulva for females) must be left naturally attached to the hide until the mandatory check has been complied with. (~~7-1-98~~)(      )

**02. Evidence of Species.** In seasons restricted to mule deer only or white-tailed deer only, if the head is removed, the fully-haired tail must be left naturally attached to the carcass. (7-1-93)

**03. Evidence of Size.** Any hunter taking a bighorn ram must leave that portion of the skull plate containing the upper one-half (1/2) of the eye socket naturally attached to both of the horns until after the horns have been pinned by the Department. (7-1-93)

**04. Other.** The Department may designate seasons and areas in which the head or lower jaw must accompany the carcass in transit. (7-1-93)

**351. WASTE OF GAME MEAT.**

Hunters are required to remove and care for the edible meat of big game animals, except mountain lions and gray wolves. This includes the meat of the front quarters as far down as the knees, hindquarters as far down as the hock, neck meat, meat along the backbone and meat covering the ribs. It does not include meat of the head, internal organs and meat on the bones after close trimming. (~~4-5-00~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**410. UNLAWFUL METHODS OF TAKE.**

No person shall take big game animals as outlined in this section. (7-1-93)

**01. Firearms.** (7-1-93)

**a.** With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

**b.** With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

**c.** With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

- d.** With a fully automatic firearm. (10-26-94)
- e.** With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)
- 02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

  - a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)
  - b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)
  - c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)
  - d.** With arrows or bolts having expanding broadheads. (7-1-93)
  - e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)
  - f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)
  - g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
  - h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)
  - i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
  - j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
  - 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 gray wolf, 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 gray wolf 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. (4-2-08)
- v. Is equipped with no more than two (2) barrels. (7-1-93)
- vi. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
- vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
- viii. Is equipped with an exposed pivoting hammer and has an exposed ignition system. (4-2-08)
- 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 gray wolf, 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)**

**420. MANDATORY CHECK AND REPORT REQUIREMENTS.**

Any hunter killing black bear, Panhandle elk, moose, bighorn sheep or mountain goat, or mountain lion in a unit with no female lion quota must, WITHIN TEN (10) DAYS OF THE DATE OF KILL, or any hunter killing mountain lion in a unit with a female quota must, WITHIN FIVE (5) DAYS OF THE DATE OF KILL, and any hunter killing a wolf must report the harvest within twenty-four (24) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the gray wolf season brochure available at Department offices and license vendors. Additionally, any hunter killing a wolf must, WITHIN FIVE (5) DAYS OF THE DATE OF KILL, comply with the mandatory check and report requirements by: ~~(4-5-00)~~( )

**01. Harvest Report.** Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken. (4-6-05)

**02. Presentation of Animal Parts.** Presenting the following animal parts so that Department personnel may collect biological data and mark the animal parts: (7-1-93)

**a.** Bear: Skull and hide to be presented to a conservation officer, regional office or official check point for removal and retention of premolar tooth and to have the hide marked. No person shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw black bear pelt which does not have an official state export tag attached (either Idaho's or another state's official export tag). (7-1-93)

**b.** Mountain Lion: Skull and hide to be presented to a conservation officer or regional office to have the hide marked. No person shall have in possession, except during the open season and for five (5) days after the close of the season, any raw mountain lion pelt which does not have an official state export tag attached (either Idaho's or another state's official export tag). (7-1-93)

**c.** Gray Wolf: Skull and hide to be presented to a conservation officer or regional office for removal and retention of a premolar tooth, and to have the hide marked. No person shall have in possession, except during the open season and for five (5) days after the close of the season, any raw gray wolf pelt which does not have an official state export tag attached (either Idaho's or another state's official export tag). ( )

**ed.** Moose: Antlers from antlered animals to be presented to a conservation officer or regional office. (7-1-93)

**de.** Bighorn Sheep: Ram horns to be presented to a regional office for marking, ewe horns to be presented to a regional office. (7-1-93)

**ef.** Mountain Goat: Horns to be presented to a conservation officer or regional office. (7-1-93)

**03. Authorized Representative.** A hunter may authorize another person to comply with the above requirements if that person complies with reporting requirements and possesses enough information to accurately complete the necessary form. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. AREAS CLOSED TO HUNTING OF BIG GAME ANIMALS.**

**01. Restricted Areas for Big Game.** Hunting, killing, or molesting of any big game animal is prohibited in the following areas: (7-1-93)

**a.** Craters of the Moon National Monument and Preserve in Blaine and Butte Counties; the boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. All of the lands added to the Monument and Preserve remain open to hunting, while lands within the former National Monument remain closed to hunting. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting. (4-6-05)

**b.** All state parks, EXCEPT Farragut State Park that has a November/December deer archery season, Billingsley Creek at Malad Gorge State Park, Castle Rock State Park and state land within the City of Rocks National Reserve are all open to hunting; (4-6-05)

**c.** Harriman State Park Wildlife Refuge. (4-6-05)

**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 to Warm Springs Avenue and the Boise City limits; (4-6-05)

**f.** Yellowstone National Park in Fremont County; (7-1-93)

**g.** On any of those portions of State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which hunting closures have been declared by legislative or Commission action; (7-1-93)

**h.** All or portions of national wildlife refuges, EXCEPT as specified in federal regulations for individual refuges; and, (7-1-93)

**i.** All Snake River islands between the Glens Ferry bridge and the Sailor Creek bridge in Elmore County. (7-1-93)

**j.** Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area of 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)

**02. Mountain Lions.** Mountain lion or Gray Wolf may not be hunted or pursued within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (~~7-1-93~~)( )

**03. Black Bear.** Black bear or Gray Wolf may not be hunted or pursued within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (~~7-1-93~~)( )

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-0802

#### 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 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 15, 2008.

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:

Amend the rule to allow the use of "red dot" scopes on crossbows by disabled archers. Allow senior and disabled hunters to apply for leftover youth controlled hunt permits. Simplify the evidence-of-sex rule to apply only during transportation of a big game carcass to a final place of storage or a Commercial meat processing facility. Correct obsolete rules concerning ¾ curl and mandatory class requirements for bighorn sheep hunters.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent various interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the 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 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0802

**260. PERMITS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Permits.** No person may hunt in any controlled hunt without having a valid controlled hunt permit in possession. (7-1-93)

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a permit is issued based on erroneous information, the permit will be invalidated by the Department and may NOT be used. The Department will notify the permittee of the invalidation of the permit. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)

**c.** Any person who receives a controlled hunt permit and tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer. (3-20-97)

**d.** Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)

**e.** Any person who receives a controlled hunt permit for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)

**f.** Any person who receives a combination controlled hunt permit/tag for antelope is prohibited from hunting in any archery antelope hunt. The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)

**g.** Any person who receives a spring controlled hunt permit for black bear is prohibited from hunting in any other spring bear hunt - April 15 to June 30. (7-1-99)

**h.** Any person who receives a fall controlled hunt permit for black bear is prohibited from hunting in any other fall bear hunts -- September 15 to October 31. (10-26-94)

**02. Nonresident Permit Limitations.** (3-20-04)

**a.** In controlled hunts with ten (10) or fewer permits, not more than one (1) nonresident permit will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits, not more than ten percent (10%) of the permits will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)

**b.** Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

**c.** For each species, the total number of outfitter allocated controlled hunt permits shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-20-04)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**a.** Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit for two (2) years. Any person whose name was drawn on a controlled hunt for



mountain goat may not apply for a mountain goat permit for two (2) years. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits nor Landowner Preference Permits. EXCEPT all successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope/deer/elk tags to hunt in any open general and/or controlled antelope, deer or elk hunt in the following hunting season. (3-15-02)

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, or a designated depredation or extra tag hunt for deer, elk or antelope. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in first-come, first-served deer, elk and antelope controlled hunt permit sales. (10-26-94)

**d.** Any person who has killed a California bighorn ram, Rocky Mountain bighorn ram or a moose on any controlled hunt may not apply for a permit for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit for five (5) years. The harvest of a bighorn ewe does not make the permittee ineligible to apply for a permit to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit. (7-1-93)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose permit for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit for antlerless moose EXCEPT that any person may apply for permits remaining unfilled after the controlled hunt draw. (4-11-06)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**m.** The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination

hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. ( )

**04. Applications.** Individual applications or group applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (10-26-94)

- a. Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, antelope and fall black bear - Application period for first drawing - May 1 - June 5. (3-30-07)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e. Deer, elk, antelope, and fall black bear - Application period for second drawing - August 5 - 15. (4-6-05)

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt permit/extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (10-26-94)

b. Only one (1) controlled hunt permit/extra tag will be issued for each person on any application submitted. (10-26-94)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt permit/tag hunts or controlled hunt permit/extra tag hunts. (10-26-94)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, antelope, moose, bighorn sheep, mountain goat, black bear, and lion, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, antelope, black bear, or mountain lion. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a permit tag in the mail. (4-6-05)

e. Any controlled hunt permits, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold forty five (45) days following the close of each respective controlled hunt drawing by any Point-of-Sale vendor on a first-come, first-served basis UNLESS such day is a Sunday, in which case the permits will go on sale the next legal business day. A controlled hunt permit and tag will be issued to successful applicants. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-15-02)

f. A "group application" for deer, elk, and antelope is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete

applications properly. All applicants must abide by the same first and second hunt choices. (10-26-94)

**g.** A “group application” for moose, bighorn sheep, mountain goat, and black bear is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (10-26-94)

**h.** If a group application exceeds the number of permits available in a hunt that group application will not be selected for that hunt. (7-1-98)

**i.** Landowner permission hunt permits will be sold first-come, first-served basis at the Nampa, McCall and Headquarters offices of the Idaho Department of Fish and Game after July 15. (7-1-98)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Permits.** Successful applicants for the first deer, elk, black bear, or antelope controlled hunt drawing must purchase and pick up their controlled hunt permit and tag by August 1. All controlled hunt tags and permits not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags and permits left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. MANDATORY SCHOOL.**

~~**01. Sheep Permits.** Anyone drawing a sheep permit must attend a mandatory sheep school at a Department office prior to hunting bighorn sheep. Attendees will be issued a certificate of completion, which must be carried by the permittee during the hunt. (7-1-93)~~

~~**02. Use of Licensed Guide.** Any hunter who will have an Idaho licensed guide with him at all times while hunting sheep may choose to have said guide attend in his place. This option may be accomplished by notifying the Department in writing of the name, address, and phone number of the designated guide. Notification must be sent to the Idaho Department of Fish and Game, c/o Sheep School, P.O. Box 25, Boise, Idaho 83707 and must be received by the Department prior to attendance by the designated guide. (7-1-93)~~

~~**03.** Mandatory Class for Deer Hunt Area 39-3. Anyone drawing a deer controlled archery-only hunt~~

permit for controlled hunt area 39-3 must attend a mandatory hunter orientation class. The class is three (3) hours long and will be offered at times specified by the Department. The orientation classes will be offered on ten (10) dates between October 15 and November 15. Since classroom size is limited, each permittee must schedule a time to attend a class prior to October 15. Attendees will be issued a certificate of completion, which must be carried by the permittee during the hunt. Holders of "Certificates of Completion" from previous hunts are not required to attend this orientation class. (4-6-05)

**271. -- 299. (RESERVED).**

**300. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN.**

- 01. Big Game Animals of Either Sex.** Big game animals of either sex may be taken as noted below: (7-1-93)
- a.** Mountain Goat. Either sex may be taken EXCEPT nannies accompanied by kids. (7-1-93)
  - b.** Black Bear. Either sex may be taken EXCEPT female black bears accompanied by young. (7-1-93)
  - c.** Mountain Lion. Either sex may be taken EXCEPT spotted young or females accompanied by young. (7-1-93)
- 02. Seasons Restricted to Antlered or Male Animals Only.** (7-1-93)
- a.** Deer. Only deer with at least one (1) antler longer than three (3) inches may be taken in any season which is open for antlered deer only. (7-1-93)
  - b.** Two-point deer. Only deer with not more than two (2) points on one (1) antler, not including brow point, and at least one (1) antler longer than three (3) inches may be taken in any season which is open for two-point deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
  - c.** Three-point deer. Only deer having at least one (1) antler with three (3) or more points not counting the brow point or tine may be taken in any season which is open for three-point or larger deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (3-15-02)
  - d.** Four-point deer. Only deer having at least one (1) antler with four (4) or more points, not including the brow point or tine, may be taken in any season that is open for four-point or larger deer only. (4-6-05)
  - e.** Elk. Only elk with at least one (1) antler longer than six (6) inches may be taken in any season which is open for antlered elk only. (7-1-99)
  - f.** Spike elk. Only elk with no branching on either antler and at least one (1) antler longer than six (6) inches may be taken in any season which is open for spike elk only. A branch is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
  - g.** Brow-tined elk. Any elk having an antler or antlers with a visible point on the lower half of either main beam that is greater than or equal to four (4) inches long. (3-15-02)
  - h.** Moose. Only moose with at least one (1) antler longer than six (6) inches may be taken in any season open for antlered moose only. (7-1-93)
  - i.** ~~Bighorn Sheep. Only bighorn sheep rams having three fourths (3/4) curl or greater horns or exceeding four (4) years of age may be taken in any hunt open for rams only. Determination of a three fourths (3/4) curl shall be made from a broad side view of the head. A ram shall be considered three fourths (3/4) curl if an imaginary straight line extending downward from the front of the base of the horn through the center of the eye socket intersects any portion of the horn.~~ (7-1-93)

- 03. Seasons Restricted to Antlerless or Female Animals Only.** (7-1-93)
- a.** Deer. Only deer without antlers or with antlers shorter than three (3) inches may be taken in any season which is open for antlerless deer only. (7-1-93)
- b.** Elk. Only elk without antlers or with antlers shorter than six (6) inches may be taken in any season which is open for antlerless elk only. (7-1-93)
- c.** Antelope. Only antelope without a black “cheek patch” or horns less than three (3) inches long may be taken during doe and fawn only antelope seasons. (7-1-93)
- d.** Bighorn sheep. Only bighorn sheep with horns between six (6) inches and twelve (12) inches in length may be taken in any season which is open for bighorn ewes only. (7-1-93)
- e.** Moose. Only moose without antlers or with antlers less than six (6) inches long may be taken in any season which is open for antlerless moose only. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

- 01. Evidence of Sex.** Evidence of sex must be left naturally attached to the carcass of any big game animal. (4-6-05)
- a.** In antlered or male only seasons, the evidence of sex requirement is met when the head, horns, or antlers are left naturally attached to the whole carcass or to a front quarter. If the head, horns, or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility; AND the horns or antlers must accompany the carcass while in transit. (7-1-93)( )
- b.** In spike elk or two-point (2) deer only seasons, the evidence of sex requirement is met when the head with both complete unaltered antlers are left naturally attached to the whole carcass or to a front quarter. If the head or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left or a commercial meat processing facility naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND both complete unaltered antlers naturally attached to each other must accompany the carcass while in transit. (7-1-93)( )
- c.** In antlerless, doe/fawn or female only seasons, if the head is removed from female elk, moose, deer, antelope or bighorn sheep, some other external evidence of sex (either udder or the vulva) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption or a commercial meat processing facility. (7-1-93)( )
- d.** The entire head of antlerless male elk, moose, deer, or antelope or a male lamb bighorn sheep killed during an antlerless, female, doe/fawn or ewe only season, may be left naturally attached to the carcass or to a front quarter until the carcass reaches the final place of storage or consumption. If the head is removed, some other external evidence of sex (either scrotum, penis, or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility. AND the lower jaw must accompany the carcass while in transit. (7-1-93)( )
- e.** For black bear and mountain lion external evidence of sex (either scrotum, penis or testicles for males, or vulva for females) must be left naturally attached to the hide until the mandatory check has been complied with. (7-1-98)

**02. Evidence of Species.** In seasons restricted to mule deer only or white-tailed deer only, if the head is removed, the fully-haired tail must be left naturally attached to the carcass. (7-1-93)

**03. Evidence of Size.** Any hunter taking a bighorn ram must leave that portion of the skull plate containing the upper one-half (1/2) of the eye socket naturally attached to both of the horns until after the horns have been pinned by the Department. (7-1-93)

**04. Other.** The Department may designate seasons and areas in which the head or lower jaw must accompany the carcass in transit. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**410. UNLAWFUL METHODS OF TAKE.**

No person shall take big game animals as outlined in this section. (7-1-93)

**01. Firearms.** (7-1-93)

**a.** With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

**b.** With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

**c.** With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

**d.** With a fully automatic firearm. (10-26-94)

**e.** With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)

**02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

**a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

**b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

**c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

**d.** With arrows or bolts having expanding broadheads. (7-1-93)

**e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

**f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (~~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 eighty-five percent (85%) let-off. (4-2-08)

- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
- j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
- 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. (4-2-08)
    - v.** Is equipped with no more than two (2) barrels. (7-1-93)
    - vi.** Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
    - vii.** Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
    - viii.** Is equipped with an exposed pivoting hammer and has an exposed ignition system. (4-2-08)
    - 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)



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-0803

#### 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 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 15, 2008.

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 January 2007, the Department recommended and the Commission adopted changes to muzzleloader equipment rules. The most controversial rule change has been the requirement for a pivoting hammer, functionally prohibiting the use of many in-line muzzleloaders in muzzleloader-only hunts. The Department recommends that the muzzleloader equipment rules be amended to allow the use of in-line muzzleloaders.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2008 hunting seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the 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 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0803

**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. (4-2-08)

**02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

**a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

**b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

**c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

**d.** With arrows or bolts having expanding broadheads. (7-1-93)

**e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

**f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)

**g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)

**h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)

**i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)

**j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)

**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:
  - 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:
    - 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. (4-2-08)
    - v. Is equipped with no more than two (2) barrels. (7-1-93)
    - vi. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
    - vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
    - viii. Is equipped with an ~~exposed pivoting hammer and has an~~ exposed ignition system. ~~(4-2-08)~~(\_\_\_\_)
    - 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)

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO**

**DOCKET NO. 13-0108-0804P**

**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 2008 Big Game Seasons establishing seasons and limits for big game hunting in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0801

#### 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 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 15, 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 is proposing to extend the youth pheasant hunt season, revise the Wildlife Management Area pheasant program hunter-orange rule, increase turkey controlled hunt tags for general and youth only, expand general season youth hunt, correct terminology and delete obsolete rules.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2008 hunting seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Don Kemner (208) 287-2748.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-0801

**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 and sharp-tailed 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~~ three (43) turkey tags available each calendar year. These are the general tag, extra tag, ~~controlled depredation tag~~, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; general; and 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. (4-2-08)(\_\_\_\_)

**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 spring and fall 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 for spring hunts and July 15 for fall hunts, 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. (2-7-95)
- v. A “group application” is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- 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)**

**300. UPLAND GAME BIRD METHODS OF TAKE.**

- 01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)
- a. Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Pheasants shall not be taken before twelve o'clock noon on the opening day in certain counties (see Rule 11, Pheasant Seasons). Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. Pheasants shall not be taken before 10 a.m. after the opening day on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife



Management Areas. (4-6-05)

**b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)

**c.** From boats or other craft having a motor attached UNLESS the motor is completely shut off and forward progress has ceased, or if the boat is drifting naturally, or if it is propelled only by paddle, oars, or pole, or if it is beached, moored, or resting at anchor. (7-1-93)

**d.** By the use or aid of any electronic call. (7-1-93)

**e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)

**f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (~~3-30-07~~)(      )

**02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)

**a.** With lead shot exceeding BB size. (7-1-93)

**b.** With steel shot exceeding T size. (7-1-93)

**c.** By the use of dogs, except during fall hunts. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. OFFICIAL SHOOTING HOURS FOR MIGRATORY GAME BIRDS.**

**01. Doves.** Official shooting hours for mourning dove are from one-half (1/2) hour before sunrise until sunset (Standard Time). Beginning and ending times are shown in Table 501 set by proclamation and published in a brochure available at Department offices and licensed vendors. (~~3-20-97~~)(      )

**02. Regular Season Ducks, Geese, American Coot and Common Snipe.** Official shooting hours for ducks, geese, American coot and common snipe during regular seasons are from one-half (1/2) hour before sunrise until sunset (Standard Time). Beginning and ending times are shown in Tables 502 through 505. These tables must be adjusted for daylight savings time set by proclamation and published in a brochure available at Department offices and licensed vendors. (~~3-20-97~~)(      )

**03. Special, Early September Canada Geese and Sandhill Cranes.** Official shooting hours for Canada geese during early September seasons, and sandhill cranes, are from one-half (1/2) hour before sunrise until sunset (Standard Time). Beginning and ending times are shown in Table 501 set by proclamation and published in a brochure available at Department offices and licensed vendors. (~~7-1-98~~)(      )

**~~501. TABLE 501—OFFICIAL SHOOTING HOURS FOR MOURNING DOVE AND EARLY SEPTEMBER CANADA GOOSE, AND SANDHILL CRANE HUNTING.~~**

~~Official shooting hours for Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties and that portion of Idaho County north of the Salmon River (Pacific time) in Column 1; Bannock, Bear Lake, Bingham, Bonneville, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power, and Teton Counties (Mountain time) in Column 2; Blaine, Butte, Camas, Cassia, Custer, Gooding, Jerome, Lemhi, Lincoln, Minidoka, and Twin Falls Counties (Mountain time) in Column 3; and Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties and that portion of Idaho County south of the Salmon River (Mountain time) in Column 4.~~

<b>September</b>	<b>Column 1</b>		<b>Column 2</b>		<b>Column 3</b>		<b>Column 4</b>	
	<b>Beginning</b>	<b>Ending</b>	<b>Beginning</b>	<b>Ending</b>	<b>Beginning</b>	<b>Ending</b>	<b>Beginning</b>	<b>Ending</b>
	<b>A.M.</b>	<b>P.M.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>A.M.</b>	<b>P.M.</b>
1	5:38	7:31	6:25	8:05	6:31	8:13	6:38	8:21
2	5:39	7:29	6:26	8:04	6:32	8:12	6:39	8:19
3	5:41	7:27	6:27	8:02	6:33	8:10	6:40	8:17
4	5:42	7:25	6:28	8:00	6:34	8:08	6:42	8:15
5	5:43	7:23	6:29	7:59	6:35	8:07	6:43	8:14
6	5:45	7:21	6:30	7:57	6:36	8:05	6:44	8:12
7	5:46	7:19	6:31	7:55	6:37	8:03	6:45	8:10
8	5:48	7:17	6:32	7:53	6:38	8:01	6:46	8:08
9	5:49	7:15	6:33	7:52	6:39	8:00	6:47	8:06
10	5:50	7:13	6:34	7:50	6:40	7:58	6:48	8:05
11	5:52	7:11	6:35	7:48	6:41	7:56	6:49	8:03
12	5:53	7:09	6:36	7:46	6:42	7:54	6:50	8:01
13	5:54	7:07	6:37	7:44	6:43	7:53	6:52	7:59
14	5:56	7:05	6:39	7:43	6:45	7:51	6:53	7:57
15	5:57	7:03	6:40	7:41	6:46	7:49	6:54	7:56
16	5:58	7:01	6:41	7:39	6:47	7:47	6:55	7:54
17	6:00	6:59	6:42	7:37	6:48	7:45	6:56	7:52
18	6:01	6:57	6:43	7:35	6:49	7:43	6:57	7:50
19	6:02	6:55	6:44	7:34	6:50	7:41	6:58	7:48
20	6:04	6:53	6:45	7:32	6:52	7:39	6:59	7:46
21	6:05	6:51	6:46	7:30	6:53	7:37	7:01	7:45
22	6:06	6:49	6:47	7:28	6:54	7:36	7:02	7:43
23	6:07	6:47	6:48	7:26	6:55	7:35	7:03	7:41
24	6:08	6:45	6:49	7:25	6:56	7:33	7:04	7:39
25	6:09	6:42	6:50	7:24	6:58	7:31	7:05	7:37
26	6:11	6:40	6:52	7:22	6:59	7:29	7:06	7:35
27	6:12	6:38	6:53	7:20	7:00	7:27	7:08	7:34
28	6:13	6:35	6:54	7:18	7:02	7:25	7:09	7:32
29	6:14	6:33	6:55	7:16	7:03	7:23	7:10	7:30
30	6:15	6:31	6:56	7:14	7:04	7:21	7:11	7:28

(3-20-97)

**502. ~~TABLE 502 -- OFFICIAL SHOOTING HOURS FOR DUCKS, GEESE, AMERICAN COOT, AND COMMON SNIFE (SEE FOOTNOTE).~~**

~~Official shooting hours for Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties and that portion of Idaho County north of the Salmon River (Pacific time).~~

	<b>Beginning</b>	<b>Ending</b>
<b>SEPTEMBER</b>	<b>A.M.</b>	<b>P.M.</b>
28	5:13	5:35
29	5:14	5:33
30	5:15	5:34

<b>OCT.</b>	<b>Begin</b>	<b>End</b>	<b>NOV.</b>	<b>Begin</b>	<b>End</b>	<b>DEC.</b>	<b>Begin</b>	<b>End</b>	<b>JAN.</b>	<b>Begin</b>	<b>End</b>
	<b>A.M.</b>	<b>P.M.</b>		<b>A.M.</b>	<b>P.M.</b>		<b>A.M.</b>	<b>P.M.</b>		<b>A.M.</b>	<b>P.M.</b>
1	5:16	5:28	1	5:59	4:34	1	6:41	4:03	1	7:02	4:12
2	5:18	5:27	2	6:01	4:32	2	6:42	4:03	2	7:02	4:13
3	5:19	5:25	3	6:02	4:31	3	6:43	4:03	3	7:02	4:14
4	5:20	5:23	4	6:03	4:29	4	6:44	4:02	4	7:02	4:15
5	5:21	5:21	5	6:05	4:28	5	6:45	4:02	5	7:01	4:16
6	5:23	5:19	6	6:06	4:27	6	6:46	4:02	6	7:01	4:17
7	5:24	5:17	7	6:08	4:25	7	6:47	4:02	7	7:01	4:18
8	5:25	5:15	8	6:09	4:24	8	6:48	4:01	8	7:01	4:19
9	5:27	5:13	9	6:11	4:23	9	6:49	4:01	9	7:00	4:20
10	5:28	5:11	10	6:12	4:21	10	6:50	4:01	10	7:00	4:22
11	5:30	5:09	11	6:14	4:20	11	6:51	4:01	11	7:00	4:23
12	5:31	5:08	12	6:15	4:19	12	6:52	4:01	12	6:59	4:24
13	5:32	5:06	13	6:16	4:18	13	6:53	4:01	13	6:59	4:25
14	5:34	5:04	14	6:18	4:17	14	6:54	4:02	14	6:58	4:27
15	5:35	5:02	15	6:19	4:16	15	6:55	4:02	15	6:58	4:28
16	5:36	5:00	16	6:21	4:14	16	6:55	4:02	16	6:57	4:29
17	5:38	4:58	17	6:22	4:13	17	6:56	4:02	17	6:56	4:31
18	5:39	4:57	18	6:24	4:12	18	6:57	4:03	18	6:56	4:32
19	5:41	4:55	19	6:25	4:12	19	6:57	4:03	19	6:55	4:33
20	5:42	4:53	20	6:26	4:11	20	6:58	4:03	20	6:54	4:35
21	5:43	4:51	21	6:28	4:10	21	6:59	4:04	21	6:53	4:36
22	5:45	4:50	22	6:29	4:09	22	6:59	4:04	22	6:52	4:38
23	5:46	4:48	23	6:30	4:08	23	6:59	4:05	23	6:51	4:39

	<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN.</b>	<b>A.M.</b>	<b>P.M.</b>
24	5:48	4:46	24	6:32	4:07	24	7:00	4:06	24	6:51	4:40
25	5:49	4:45	25	6:33	4:07	25	7:00	4:06	25	6:50	4:42
26	5:50	4:43	26	6:34	4:06	26	7:01	4:07	26	6:49	4:43
27	5:52	4:41	27	6:36	4:05	27	7:01	4:08	27	6:47	4:45
28	5:53	4:40	28	6:37	4:05	28	7:01	4:08	28	6:46	4:46
29	5:55	4:38	29	6:38	4:04	29	7:01	4:09	29	6:45	4:48
30	5:56	4:37	30	6:39	4:04	30	7:01	4:10	30	6:44	4:49
31	5:58	4:35				31	7:02	4:11	31	6:43	4:51

*Footnote. Times shown are "Standard" and must be adjusted for "Daylight Savings Time" which ends at 2:00 a.m. on the last Sunday of October. To make the adjustment add one (1) hour from September 28 through the last Saturday of October. (3-20-97)*

**503. ~~TABLE 503 — OFFICIAL SHOOTING HOURS FOR DUCKS, GEESE, AMERICAN COOT, AND COMMON SNIFE (SEE FOOTNOTE).~~**

*Official shooting hours for Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties and that portion of Idaho County south of the Salmon River (Mountain time).*

	<i>Beginning</i>	<i>Ending</i>
<b>SEPTEMBER</b>	<b>A.M.</b>	<b>P.M.</b>
28	6:09	6:32
29	6:10	6:30
30	6:11	6:28

	<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN.</b>	<b>A.M.</b>	<b>P.M.</b>
1	6:12	6:26	1	6:50	5:36	1	7:28	5:10	1	7:48	5:19
2	6:13	6:25	2	6:51	5:35	2	7:29	5:09	2	7:48	5:20
3	6:14	6:23	3	6:53	5:34	3	7:30	5:09	3	7:48	5:21
4	6:15	6:21	4	6:54	5:32	4	7:31	5:09	4	7:48	5:22
5	6:17	6:19	5	6:55	5:31	5	7:32	5:09	5	7:48	5:23
6	6:18	6:17	6	6:57	5:30	6	7:33	5:08	6	7:48	5:24
7	6:19	6:16	7	6:58	5:29	7	7:34	5:08	7	7:48	5:25
8	6:20	6:14	8	6:59	5:27	8	7:35	5:08	8	7:48	5:26
9	6:21	6:12	9	7:01	5:26	9	7:36	5:08	9	7:48	5:27
10	6:23	6:10	10	7:02	5:25	10	7:37	5:08	10	7:47	5:28

	<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN.</b>	<b>A.M.</b>	<b>P.M.</b>
11	6:24	6:09	11	7:03	5:24	11	7:38	5:08	11	7:47	5:29
12	6:25	6:07	12	7:05	5:23	12	7:39	5:08	12	7:47	5:30
13	6:26	6:05	13	7:06	5:22	13	7:40	5:09	13	7:46	5:31
14	6:27	6:04	14	7:07	5:21	14	7:40	5:09	14	7:46	5:33
15	6:29	6:02	15	7:08	5:20	15	7:41	5:09	15	7:45	5:34
16	6:30	6:00	16	7:10	5:19	16	7:42	5:09	16	7:45	5:35
17	6:31	5:59	17	7:11	5:18	17	7:42	5:09	17	7:44	5:36
18	6:32	5:57	18	7:12	5:17	18	7:43	5:10	18	7:44	5:37
19	6:34	5:55	19	7:14	5:17	19	7:44	5:10	19	7:43	5:39
20	6:35	5:54	20	7:15	5:16	20	7:44	5:11	20	7:42	5:40
21	6:36	5:52	21	7:16	5:15	21	7:45	5:11	21	7:42	5:41
22	6:37	5:51	22	7:17	5:14	22	7:45	5:12	22	7:41	5:43
23	6:39	5:49	23	7:19	5:14	23	7:46	5:12	23	7:40	5:44
24	6:40	5:48	24	7:20	5:13	24	7:46	5:13	24	7:39	5:45
25	6:41	5:46	25	7:21	5:12	25	7:47	5:13	25	7:38	5:47
26	6:42	5:45	26	7:22	5:12	26	7:47	5:14	26	7:38	5:48
27	6:44	5:43	27	7:23	5:11	27	7:47	5:15	27	7:37	5:49
28	6:45	5:42	28	7:25	5:11	28	7:48	5:15	28	7:36	5:51
29	6:46	5:40	29	7:26	5:10	29	7:48	5:16	29	7:35	5:52
30	6:48	5:39	30	7:27	5:10	30	7:48	5:17	30	7:34	5:53
31	6:49	5:38				31	7:48	5:18	31	7:33	5:55

*Footnote. Times shown are "Standard" and must be adjusted for "Daylight Savings Time" which ends at 2:00 a.m. on the last Sunday of October. To make the adjustment add one (1) more hour from September 30 through the last Saturday of October.* (3-20-97)

**504. ~~TABLE 504 -- OFFICIAL SHOOTING HOURS FOR DUCKS, GEESE, AMERICAN COOT, AND COMMON SNIFE (SEE FOOTNOTE).~~**

*Official shooting hours for Blaine, Butte, Camas, Cassia, Custer, Gooding, Jerome, Lemhi, Lincoln, Minidoka, and Twin Falls Counties (Mountain time):*

	<b>Beginning</b>	<b>Ending</b>
<b>SEPTEMBER</b>	<b>A.M.</b>	<b>P.M.</b>
28	6:02	6:25
29	6:03	6:23
30	6:04	6:24

	<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN</b>	<b>A.M.</b>	<b>P.M.</b>
1	6:05	6:19	1	6:41	5:30	1	7:19	5:04	1	7:40	5:13
2	6:06	6:17	2	6:43	5:29	2	7:20	5:04	2	7:40	5:14
3	6:08	6:16	3	6:44	5:27	3	7:21	5:04	3	7:40	5:14
4	6:09	6:14	4	6:45	5:26	4	7:22	5:03	4	7:40	5:15
5	6:10	6:12	5	6:47	5:25	5	7:23	5:03	5	7:40	5:16
6	6:11	6:10	6	6:48	5:24	6	7:24	5:03	6	7:40	5:17
7	6:12	6:09	7	6:49	5:23	7	7:25	5:03	7	7:39	5:18
8	6:13	6:07	8	6:50	5:21	8	7:26	5:03	8	7:39	5:19
9	6:14	6:05	9	6:52	5:20	9	7:26	5:03	9	7:39	5:20
10	6:16	6:04	10	6:53	5:19	10	7:27	5:03	10	7:39	5:21
11	6:17	6:02	11	6:54	5:18	11	7:28	5:03	11	7:38	5:22
12	6:18	6:00	12	6:56	5:17	12	7:29	5:03	12	7:38	5:23
13	6:19	5:59	13	6:57	5:16	13	7:30	5:03	13	7:38	5:24
14	6:20	5:57	14	6:58	5:15	14	7:31	5:03	14	7:37	5:26
15	6:21	5:55	15	6:59	5:14	15	7:31	5:04	15	7:37	5:27
16	6:23	5:54	16	7:01	5:13	16	7:32	5:04	16	7:36	5:28
17	6:24	5:52	17	7:02	5:13	17	7:33	5:04	17	7:36	5:30
18	6:25	5:50	18	7:03	5:12	18	7:33	5:05	18	7:35	5:31
19	6:26	5:49	19	7:04	5:11	19	7:34	5:05	19	7:35	5:32
20	6:28	5:48	20	7:06	5:10	20	7:35	5:05	20	7:34	5:33
21	6:29	5:46	21	7:07	5:09	21	7:35	5:05	21	7:33	5:35
22	6:30	5:44	22	7:08	5:09	22	7:36	5:06	22	7:33	5:36
23	6:31	5:43	23	7:09	5:08	23	7:36	5:07	23	7:32	5:37
24	6:32	5:41	24	7:10	5:07	24	7:36	5:08	24	7:31	5:38
25	6:34	5:40	25	7:12	5:07	25	7:36	5:08	25	7:30	5:40
26	6:35	5:38	26	7:13	5:06	26	7:36	5:09	26	7:29	5:41
27	6:36	5:37	27	7:14	5:06	27	7:37	5:09	27	7:29	5:42
28	6:37	5:35	28	7:15	5:05	28	7:37	5:10	28	7:28	5:44
29	6:39	5:34	29	7:16	5:05	29	7:37	5:11	29	7:27	5:45
30	6:40	5:33	30	7:17	5:05	30	7:37	5:12	30	7:26	5:46
31	6:41	5:31				31	7:37	5:13	31	7:25	5:48

*Footnote. Times shown are "Standard" and must be adjusted for "Daylight Savings Time" which ends at 2:00 a.m.*

on the last Sunday of October. To make the adjustment add one (1) hour from September 28 through the last Saturday of October. (3-20-97)

**505. ~~TABLE 505 — OFFICIAL SHOOTING HOURS FOR DUCKS, GEESE, AMERICAN COOT, AND COMMON SNIFE (SEE FOOTNOTE).~~**

*Official shooting hours for Bannock, Bear Lake, Bingham, Bonneville, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power, and Teton Counties (Mountain time).*

	<b>Beginning</b>	<b>Ending</b>
<b>SEPTEMBER</b>	<b>A.M.</b>	<b>P.M.</b>
28	5:54	6:18
29	5:55	6:16
30	5:56	6:14

	<b>Begin</b>	<b>End</b>		<b>Begin</b>	<b>End</b>		<b>Begin</b>	<b>End</b>		<b>Begin</b>	<b>End</b>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN.</b>	<b>A.M.</b>	<b>P.M.</b>
1	5:57	6:12	1	6:34	5:23	1	7:11	4:57	1	7:32	5:07
2	5:58	6:10	2	6:36	5:22	2	7:13	4:57	2	7:32	5:08
3	6:00	6:09	3	6:37	5:20	3	7:14	4:57	3	7:32	5:08
4	6:01	6:07	4	6:38	5:19	4	7:15	4:56	4	7:32	5:09
5	6:02	6:05	5	6:40	5:18	5	7:16	4:56	5	7:32	5:10
6	6:03	6:03	6	6:41	5:17	6	7:17	4:56	6	7:32	5:11
7	6:04	6:02	7	6:42	5:16	7	7:18	4:56	7	7:31	5:12
8	6:05	6:00	8	6:43	5:14	8	7:19	4:56	8	7:31	5:13
9	6:06	5:58	9	6:45	5:13	9	7:19	4:56	9	7:31	5:14
10	6:08	5:57	10	6:46	5:12	10	7:20	4:56	10	7:31	5:16
11	6:09	5:55	11	6:47	5:11	11	7:21	4:56	11	7:30	5:17
12	6:10	5:53	12	6:49	5:10	12	7:22	4:56	12	7:30	5:18
13	6:11	5:52	13	6:50	5:09	13	7:23	4:56	13	7:30	5:19
14	6:12	5:50	14	6:51	5:08	14	7:24	4:56	14	7:29	5:20
15	6:13	5:48	15	6:52	5:07	15	7:25	4:57	15	7:29	5:21
16	6:15	5:47	16	6:54	5:06	16	7:25	4:57	16	7:28	5:22
17	6:16	5:45	17	6:55	5:06	17	7:26	4:57	17	7:28	5:24
18	6:17	5:43	18	6:56	5:05	18	7:26	4:58	18	7:27	5:25
19	6:18	5:42	19	6:57	5:04	19	7:27	4:58	19	7:27	5:26
20	6:20	5:40	20	6:59	5:03	20	7:28	4:58	20	7:26	5:27
21	6:21	5:39	21	7:00	5:02	21	7:28	4:59	21	7:25	5:29
22	6:22	5:37	22	7:01	5:02	22	7:29	4:59	22	7:25	5:30

	<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>		<i>Begin</i>	<i>End</i>
<b>OCT.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>NOV.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>DEC.</b>	<b>A.M.</b>	<b>P.M.</b>	<b>JAN.</b>	<b>A.M.</b>	<b>P.M.</b>
23	6:23	5:36	23	7:02	5:04	23	7:29	5:00	23	7:24	5:34
24	6:24	5:34	24	7:03	5:00	24	7:30	5:04	24	7:23	5:32
25	6:26	5:33	25	7:05	5:00	25	7:30	5:04	25	7:22	5:34
26	6:27	5:34	26	7:06	4:59	26	7:30	5:02	26	7:24	5:35
27	6:28	5:30	27	7:07	4:59	27	7:34	5:02	27	7:24	5:36
28	6:29	5:28	28	7:08	4:58	28	7:34	5:03	28	7:20	5:38
29	6:34	5:27	29	7:09	4:58	29	7:34	5:04	29	7:19	5:39
30	6:32	5:26	30	7:10	4:58	30	7:34	5:05	30	7:18	5:40
31	6:33	5:24				31	7:34	5:05	31	7:17	5:42

*Footnote. Times shown are "Standard" and must be adjusted for "Daylight Savings Time" which ends at 2:00 a.m. on the last Sunday of October. To make the adjustment add one (1) hour from September 28 through the last Saturday of October.* (3-20-97)

**5061. -- 599. (RESERVED).**

**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 Upland Game Permit. (4-2-08)**

**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~~ Upland Game Bird Permit in his or her possession. (4-6-05)( )

**b.** Permit Limit. The WMA Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (4-2-08)

**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 possession 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**604. FOREST GROUSE (~~BLUE DUSKY~~, RUFFED, AND SPRUCE).**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets 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)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**616. SANDHILL CRANE SEASONS AND BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets 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)

**01. Controlled Hunts.** Controlled hunt areas include the following: (7-1-98)

**a.** Area 1 includes all of Bear Lake County and all of Caribou County EXCEPT that portion downstream from the dam at Alexander Reservoir south of U.S. Highway 30, and that portion lying within the Grays Lake Basin. (5-3-03)

**b.** Area 2 includes all of Teton County. (5-3-03)

**c.** Area 3 includes all of Fremont County. (5-3-03)

**d.** Area 4 includes all of Bonneville County. ( )

**e.** Area 5 includes all of Jefferson County. ( )

~~**02. Controlled Hunt Seasons, Bag and Possession Limits, and Permits.**~~

<b>HUNT AREA</b>	<b>HUNT NUMBER</b>	<b>SEASON</b>	<b>PERMITS</b>
4	9501	September 1-2	80
4	9502	September 3-5	80
4	9503	September 6-8	35
4	9504	September 9-11	35
4	9505	September 12-15	33

<b>HUNT AREA</b>	<b>HUNT NUMBER</b>	<b>SEASON</b>	<b>PERMITS</b>
4	9506	September 1-7	40
4	9507	September 8-15	35
2	9508	September 1-7	40
2	9509	September 8-15	35
<i>NOTE: Daily limit is two (2) for all hunts. The season limit is nine (9).</i>			

(5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. WILD TURKEY CONTROLLED HUNT AREA DESCRIPTIONS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets turkey controlled hunts areas by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. ( )

- 01.** ~~*Hunt Area 901-1. All of Game Management Units 1, 2, (except Farragut State Park and Farragut Wildlife Management Area are closed), 3, 4, 4A, 5, and 6.*~~ (5-3-03)
- 02.** ~~*Hunt Area 908-1. All of Game Management Units 8, 8A, and 10A.*~~ (5-3-03)
- 03.** ~~*Hunt Area 922-1. All of Game Management Units 22, 23, 24, 31, 32, 32A, 33, and 39.*~~ (5-3-03)
- 04.** ~~*Hunt Area 938-1. All of Game Management Unit 38, and that portion of Unit 32 in Payette County.*~~ (3-30-01)
- 05.** ~~*Hunt Area 950-1. All of Unit 50.*~~ (5-3-03)
- 06.** ~~*Hunt Area 954-1 and 954-2. All of Game Management Unit 54.*~~ (5-3-03)
- 07.** ~~*Hunt Areas 968A-1, 968A-2, and 968A-3. All of Game Management Unit 68A.*~~ (3-30-01)
- 08.** ~~*Hunt Areas 977-1, 977-2, and 977-3. All of Game Management Units 73, 74, 75, and 77.*~~ (3-30-01)

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO**

**DOCKET NO. 13-0109-0802P**

**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 2008 Waterfowl Seasons establishing seasons and limits for waterfowl hunting in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO**

**DOCKET NO. 13-0109-0803P**

**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 2008-2009 and 2009-2010 Upland Game Bird Seasons establishing seasons and limits for upland game bird, including turkey, hunting in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0801

### 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 36-104(b) and 36-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend the two pole permit rule to comply with amendments in governing law.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0111-0801

106. -- 1989. (RESERVED).

~~199. TWO POLE VALIDATION.~~

~~A person who has a valid or nonresident fishing license may purchase a two (2) pole validation. The two (2) pole validation authorizes the license holder to use two (2) fishing poles or rods at the same time on waters and during seasons specified by Commission Rule, IDAPA 13.01.11, "Rules Governing Fish." (7-1-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

299. TWO POLE BAG AND POSSESSION LIMITS, SEASONS, WATERS, AND METHODS OF GEAR.

01. **Bag and Possession Limits.** Holders of the two (2) pole ~~validation~~ permit shall have the same bag and possession limit as the general bag and possession limits and regional exceptions whether using one (1) or two (2) poles. Please see Fishing brochure, which contains the Commission's proclamation setting seasons, bag, and possession limits, and regional exceptions. ~~(3-30-01)(\_\_\_\_\_)~~

02. **Seasons.** The two (2) pole ~~validation~~ permit shall only be valid on waters which are open to fishing under the general fishing seasons and regional exceptions. ~~(4-6-05)(\_\_\_\_\_)~~

03. **Waters.** The two (2) pole ~~validation~~ permit is valid on all waters open to fishing under general rules and regional exceptions. ~~(4-6-05)(\_\_\_\_\_)~~

04. **Methods and Gear.** The restrictions of Section 201 shall apply to the use of two (2) poles under the two (2) pole ~~validation~~ permit, except for the number of handlines or poles. ~~(7-1-99)(\_\_\_\_\_)~~

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0802

### 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 36-104(b) and 36-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Biannual review of fishing rules, and set the 2008-2009 fishing seasons and regional exceptions. Remove the general 12 inch minimum size limit on bass in North Idaho waters (Salmon River and north); restrict the use of live leeches, frogs, salamanders and shrimp as bait; increase the maximum size of traps and seines for minnows and crayfish.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2008 fishing seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the 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 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0111-0802

**201. FISHING METHODS AND GEAR.**

Unless modified by a regional exception, the following fishing methods and restrictions are applicable in all Idaho waters. (3-20-97)

**01. Archery and Spear Fishing.** Fishing with the use of bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of bullfrogs and unprotected nongame fish, and only in those waters during the season set for the taking of game fish. (7-1-99)

**02. Bait Restricted.** It is unlawful to fish with bait in waters designated as artificial flies and lures only, fly fishing only, or no bait. (3-30-07)

**03. Barbed Hooks.** It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. It is unlawful to fish in no bait waters with barbed hooks. (3-30-07)

**04. Fishing Gear.** It is unlawful to fish in any waters of Idaho with more than one (1) handline or pole with a line attached, except a person with a two (2) pole validation may use two (2) poles; or with more than five (5) lines while ice fishing; or by archery, spearfishing, snagging, hands, and netting except as permitted. Not more than five (5) hooks may be attached per line. The line or lines must be attended by the person fishing. (4-6-05)

**05. Fishing Shelters.** Any enclosure or shelter which is left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address legibly marked on two (2) opposing sides of the enclosure or shelter. (7-1-99)

**06. Gaff Hook.** It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species. (3-20-97)

**07. Molesting Fish.** It is unlawful to molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (3-20-97)

**08. Snagging.** It is unlawful to snag game fish, unless otherwise stated by Commission rules/exceptions. Snagging of unprotected nongame fish species is permitted. (3-20-97)

**09. Trapping and Seining Minnows or Crayfish.** It is lawful to take ~~the young of~~ unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, provided the seine or net does not exceed ~~four ten (410)~~ feet in length or width, and the minnow or crayfish trap does not exceed ~~eighteen (18) inches in length or twelve (12) inches in diameter or width~~ two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an ~~eighteen by twelve by twelve inches (18"x12"x12")~~ eight (8) cubic foot trap, it is also lawful to use. All fish so taken must immediately be killed except where stated otherwise. All traps must have a tag attached bearing the owner's name and address. Minnows and crayfish may only be taken during the season set for the taking of game fish in those waters. (~~3-20-97~~)( )

**10. Use of Bait.** It is unlawful to use live fish, ~~leeches, frogs, salamanders, waterdogs or shrimp~~ as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished. (~~3-20-97~~)( )

**11. Use of Hands.** It is lawful to take bull frogs and crayfish with the hands. (3-20-97)

**202. BAG AND POSSESSION LIMITS.**

**01. Bag Limit.** Maximum number of fish that may be lawfully taken by one (1) person in one (1) day. The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead. (3-20-97)

**02. Possession Limit.** Maximum number of fish that may be lawfully in possession of any one (1)



person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish. (3-20-97)

**03. Transport or Gift.** No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. However, no person may claim ownership of more fish than allowed by the possession limit. (7-1-99)

**04. Table on Bag and Possession Limits for Specified Fish.**

SPECIES	BAG AND POSSESSION LIMITS	
<b>BASS</b> - Largemouth and Smallmouth <u>North of and including the Salmon River drainage (Panhandle, Clearwater, Salmon and northern part of Southwest regions)</u>	<b>6</b>	In the aggregate of both species, <del>NONE under 12 inches.</del>
<b>BASS</b> - Largemouth and Smallmouth <u>South and east of the Salmon River drainage (Upper Snake, Southeast, Magic Valley and southern part of Southwest regions)</u>	<b>6</b>	In the aggregate of both species, <u>NONE under 12 inches.</u>
<b>BROOK TROUT</b>	<b>25</b>	
<b>BULL TROUT</b> (Dolly Varden)	<b>NONE</b>	There is no harvest season for bull trout. Any bull trout caught may not be removed from the water and must be released immediately.
<b>BURBOT</b> (Ling)	<b>NONE</b>	There is no harvest season for burbot. Any burbot caught may not be removed from the water and must be released immediately.
<b>NORTHERN PIKE</b>	<b>6</b>	
<b>SALMON</b> (Anadromous)		See Rules 500 to 599
<b>STEELHEAD</b>		See Rules 400 to 499
<b>STURGEON</b>	<b>NONE</b>	There is no harvest season for sturgeon. Any sturgeon caught may not be removed from the water and must be released immediately. Barbless hooks required.
<b>TIGER MUSKIE</b>	<b>2</b>	NONE under 40 inches.
<b>TROUT</b> - includes the following trout family fishes brook, brown, cutthroat, golden, grayling, lake, (Mackinaw), rainbow, splake, sunapee; trout hybrids; and the landlocked forms of chinook, coho, Atlantic and kokanee (blueback) salmon.	<b>6</b>	In the aggregate of all species (see Magic Valley Southeast, Upper Snake regions for special cutthroat trout restrictions).
<b>WALLEYE</b>	<b>No Limit</b>	SEE MAGIC VALLEY and SOUTHEAST REGIONAL EXCEPTIONS
<b>WHITEFISH</b>	<b>25</b>	
<b>PROTECTED NONGAME FISH</b> - Shoshone, Wood River and Bear Lake sculpin, sand-roller, leatherside chub, Pacific lamprey.	<b>NONE</b>	May not be taken or possessed.

SPECIES	BAG AND POSSESSION LIMITS
All Species other than those listed above.	NO LIMIT

~~(3-30-07)~~( )

**05. Family Fishing Waters.** Waters designated as Family Fishing Waters shall have a year round season: a general bag limit of six (6) trout, of six (6) bass; no length limits; and allow the use of standard fishing gear. Pursuant to Section 36-105(3), Idaho Code, the Commission sets seasons and regional exceptions, including designated Family Fishing Waters, by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-30-07)

**06. Special Limits.** No person shall fish in any waters while having fish in possession in excess of the limits for those waters. (7-1-99)

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.11 - RULES GOVERNING FISH**

**DOCKET NO. 13-0111-0803P**

**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 2008-2009 Fishing Seasons establishing seasons and limits for fishing in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 pm**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.13 - RULES GOVERNING THE TAKING OF AMERICAN CROW IN THE STATE OF IDAHO**

**DOCKET NO. 13-0113-0801P**

**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 2008-2009 and 2009-2010 Crow Seasons establishing seasons and limits for crow hunting in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**  
**13.01.14 - RULES GOVERNING FALCONRY IN THE STATE OF IDAHO**

**DOCKET NO. 13-0114-0801P**

**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 2008-2009 and 2009-2010 Falconry Seasons establishing seasons and limits for hunting by falconry in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE**  
**Idaho Department of Fish and Game**  
**319 South 417 East**  
**Jerome, 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).

DATED this 20th day of August, 2008.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-0801

#### 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 36-104(b), 36-1101, and 36-1103, 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 15, 2008.

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 is proposing to increase otter harvest quotas in the Magic Valley and Upper Snake Regions; close beaver trapping on Willow Creek drainage in Units 66 and 69; increase beaver trapping opportunity in the Southeast and Magic Valley Regions; and amend the list of Wildlife Management Areas open to trapping.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2008 hunting and trapping seasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Don Kemner (208) 287-2748.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-0801

600. TRAPPING ON GAME PRESERVES AND WILDLIFE MANAGEMENT AREAS.

**01. Game Preserves and Wildlife Management Areas.** All state game preserves and Department of Fish and Game Wildlife Management Areas are open to the taking of furbearing animals by licensed trappers during the open season declared for the areas in which they lie. However, the ~~Billingsley Creek, Hagerman, Niagara Springs and Sterling~~ Wildlife Management Areas are open to muskrat or mink trapping by controlled trapping permit only. (7-1-93)(    )

**02. Contact or Registration Requirements.** Trappers who are trapping on any of the following Wildlife Management Areas must contact or register either at the management headquarters or the regional office: (7-1-93)

- a. Billingsley Creek. (7-1-93)
- b. Boise River. (7-1-93)
- c. Andrus. (7-1-99)
- d. Camas Prairie Centennial Marsh. (7-1-93)
- e. C.J. Strike. (7-1-93)
- f. Carey Lake. (7-1-93)
- g. Cartier Slough. (7-1-93)
- h. Coeur d'Alene River. (7-1-93)
- i. Craig Mountain. (7-1-93)
- j. Fort Boise. (7-1-93)
- k. Hagerman. (7-1-93)
- l. Market Lake. (7-1-93)
- m. McArthur Lake. (7-1-93)
- n. Montpelier. (7-1-93)
- o. Mud Lake. (7-1-93)
- p. Niagara Springs. (7-1-93)
- q. Payette. (7-1-93)
- r. Portneuf. (7-1-93)
- s. Sand Creek. (7-1-93)
- t. Snow Peak. (7-1-93)
- u. Sterling. (7-1-93)
- v. Tex Creek. (7-1-93)
- w. Georgetown Summit (    )
- x. Blackfoot River (    )

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE  
AND THE TAKING OF FURBEARING ANIMALS**

**DOCKET NO. 13-0116-0802P**

**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 2008-2009 and 2009-2010 Furbearer, Predator and Unprotected Species Seasons establishing seasons and limits for unprotected species and predator hunting; and trapping and hunting of furbearers in Idaho.

**PUBLIC HEARING SCHEDULE:** A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**WEDNESDAY - NOVEMBER 5, 2008 - Approximately 7 p.m.**

**MAGIC VALLEY REGION OFFICE  
Idaho Department of Fish and Game  
319 South 417 East  
Jerome, 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).

DATED this 20th day of August, 2008.

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

### 13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-0801

#### 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 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 15, 2008.

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:

Amend the rules to clarify the application to bait containers, and the required removal at the end of each season.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the 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 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-0801

**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 or bait container 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, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season; ~~of the spring, and fall, or black bear seasons~~ dog training. (~~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 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. (4-2-08)

**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 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.19 - RULES FOR OPERATING, DISCONTINUING, AND SUSPENDING VENDORS

DOCKET NO. 13-0119-0801

#### 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 36-104(b) and 36-301, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Delete obsolete rules concerning reimbursement of telecommunication costs, correct statutory references and terminology; and amend several rules concerning ordering supplies and canceling documents to update terminology to the computerized licensing 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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Craig Wiedmeier (208) 287-2704.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0119-0801

**100. COMPUTERIZED LICENSING SYSTEM.**

**01. Licensing System Requirements.** All businesses who issue department documents shall be required to issue documents using the Department's computerized licensing system beginning with the 1996 calendar year licenses. (3-20-97)

**02. License Vendor Manual.** Businesses shall issue documents according to the "License Vendor Manual" provided by the Department. (3-20-97)

**03. Deposit Schedule.** Amounts collected from the sale and issuance of the department documents, along with the Department's share of the license issuance fee for each document ~~and the vendor's share of the weekly telecommunication charges,~~ shall be deposited not less frequently than once every seven (7) calendar days in a bank account prescribed by the ~~Department~~ License Vendor. (~~3-20-97~~)(    )

**04. Reporting Time Period.** The accounting and reporting time period is a calendar week (Sunday through Saturday). All monies due for the week is to be deposited in the prescribed bank by the following Wednesday. All reports for a week are to be sent to the Department's license section on or before the following Wednesday. (3-20-97)

**101. -- 110. (RESERVED).**

**111. OUT-OF-STATE VENDORS.**

In general, an out-of-state location will not be approved to sell nonresident licenses unless it is located in close proximity (within fifty (50) miles) to the Idaho border or deemed to be a benefit for the Department. The application must also meet the rules for approving new vendors and have a compelling benefit in order to be approved. (~~3-20-97~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. VENDOR LOCATION NOT MOVEABLE.**

Each vendorship is approved for the specific location indicated on the vendorship application form. As movement of a vendorship from one area to another may not be in the interest of the Department or public, no vendorship may be relocated to another area (address) without written consent from the ~~Chief, Bureau of Administration~~ License Operations Manager. (~~3-20-97~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. CONTRACT AGREEMENT VIOLATIONS.**

**01. Notices of Contract Violations.** Notices of contract violations will be issued by the ~~Chief, Bureau of Administration~~ License Operations Manager, whenever a vendor shall fail to either make a license report or send in voided or canceled licenses on time or issue licenses as instructed. (~~3-20-97~~)(    )

**02. Vendorship Performance Report.** Prior to issuing a third contract violation, a vendorship performance report (BA-119) will be sent to the appropriate conservation officer. The conservation officer should discuss the problem with the vendor and recommend whether or not a third violation should be issued. The form should be submitted to the License Section through the conservation officer's supervisors for their comments. (3-20-97)

**03. Intent to Suspend.** Prior to suspending a vendor upon a third contract violation, a written notice of intent to suspend shall be sent to the vendor. The vendor shall have fifteen (15) days in which to contact the director.

(3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**122. TERMINATION OR SUSPENSION OF VENDOR.**

**01. Suspension Grounds.** The Department may terminate or suspend a license vendor on the following grounds: (3-20-97)

**a.** The vendor fails to submit any canceled or voided licenses weekly. (3-20-97)

**b.** The vendor submits canceled or voided licenses late three (3) times during any twelve (12) month period. (3-20-97)

**c.** The vendor fails to have sufficient funds for the electronic funds transfer (EFT) to the Department more than once during any twelve (12) month period. (3-20-97)

**d.** The vendor fails to make good any funds deficiency to the Department within three (3) days of notification. (3-20-97)

**e.** The vendor fails to follow any procedures specified by the Department for selling or reporting sales. (3-20-97)

**f.** A vendor will be suspended for up to twelve (12) months following a third contract agreement violation within any twelve (12) month period. (3-20-97)

**g.** The vendor fails to comply with any other terms of the agreement or fails to maintain the original criteria used in determining eligibility to become a vendor. (7-1-98)

**h.** The Department discovers any fraud or deception in the application of the license vendor. (3-20-97)

**i.** A vendorship will be suspended immediately and may be terminated upon discovering that any license was altered by that vendorship. (3-20-97)

**j.** A vendorship will be immediately suspended and may be terminated upon failure to comply with the provisions of the contract agreement. (3-20-97)

**k.** A vendorship will be terminated immediately upon conviction of any of the following: (3-20-97)

**i.** Violation of Fish and Game laws and/or rules. (3-20-97)

**ii.** Violation in the issuance of a license or in performance as a vendor. (3-20-97)

**l.** A vendorship will be terminated immediately upon notice from the bonding company that the vendor's bond has been canceled. (3-20-97)

**m.** Vendorships that have been inactive for a year will be terminated. Inactive vendors who have been terminated may reapply to become vendors, and the vendorship application will be processed in the regular manner. The application must meet all requirements for approval. (3-20-97)

**n.** A vendor will be terminated immediately upon receiving two (2) suspensions in any three (3) year period. (3-20-97)

**02. Notice.** If the Department determines that any of the grounds listed above for termination exist and decides termination or suspension is necessary, the Department shall provide a fifteen (15) day written notice to the vendor of its intention to terminate or suspend the agreement, except where the Department determines that an emergency or a risk to the public is created by the vendor's conduct or where the vendor has failed to pay for any fund deficiency within the prescribed time, in which case the Department may terminate the vendor's agreement immediately. (3-20-97)

**03. Reapplication.** A person whose vendorship is terminated for nonpayment of license fees may not reapply to become a license vendor until all outstanding fees, including interest charged at the legal rate for judgments, has been paid in full. (7-1-98)

**04. Terminations-Minimum Sales.** (3-20-97)

**a.** Incorporated City. When a vendor located within an incorporated city fails to sell at least three hundred (300) licenses during the first year of operation, or sell at least six hundred twenty-five (625) licenses during the second and subsequent years, termination will be at the end of the calendar year. A vendorship not selling the minimum number of licenses will not be terminated if the ~~Chief, Bureau of Administration~~ License Operations Manager determines the service is necessary for the function of the Department. (~~3-20-97~~)(      )

**b.** All Other Areas. All other vendors who fail to sell at least one hundred twenty-five (125) licenses during the first year of operation, or at least two hundred twenty-five (225) licenses during the second and subsequent year, will be terminated at the end of the calendar year. A vendorship not selling the minimum number of licenses will not be terminated if the ~~Chief, Bureau of Administration~~ License Operations Manager determines the service necessary for the function of the Department. (~~3-20-97~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. ISSUING LICENSES AND TAGS.**

**01. Identification Required.** A vendor shall receive proper identification as defined in Subsection 130.03 of this rule from each individual before issuing an Idaho resident license or tag. Nonresident licenses, and daily fishing licenses do not require identification. (4-6-05)

**02. Ordering by Mail.** Licenses and tags also may be obtained by mail by forwarding to the Idaho Department of Fish and Game, License Section, PO Box 25, Boise, ID 83707, a legible copy of proper identification as described in Subsection 130.03 of this rule: (3-20-97)

**a.** Applications for mail-ordered licenses and tags shall be made on department forms obtainable from department offices or the Department's website and shall be postmarked on or before any deadlines that may have been established for issuance of such license or tag. (~~3-20-97~~)(      )

**b.** The Department may require additional information to assist with the completion of mail-ordered transactions. (3-20-97)

**c.** Licenses or tags shall not be issued until the required fee has been received by the Department in the form of personal check or money order. (3-20-97)

**03. Proof of Residence.** The vendor shall confirm proof of residence before issuing a resident license. In cases where the vendor cannot obtain suitable proof of residence, the vendor should NOT issue the license and refer the applicant to the local conservation officer or department office so that residency can be verified by the Department. If a person drives and is applying for an Idaho resident Fish and Game license, they must provide a valid Idaho driver's license. A previous year's fish and game license is not acceptable proof of residency. Acceptable proof of residency is: (4-6-05)

- a. A valid Idaho driver's license for all persons who drive. (4-6-05)
- b. Persons who have not been issued a driver's license, who do not drive and who are eighteen (18) years of age or older are required to prove residency by providing two (2) pieces of identification bearing the name and address of the applicant, but not issued by himself, acceptable documents are: (4-6-05)
  - i. Idaho identification card. (4-6-05)
  - ii. In the case of a minor child (under eighteen (18)) identification from a parent. (3-20-97)
  - iii. Home electricity, gas, cable or phone utility bills dated at least six (6) months prior. (4-6-05)
  - iv. Notarized statement from an employer on business letterhead. (3-20-97)
  - v. Proof of voter registration dated six (6) months prior. (3-20-97)
  - vi. A residency affidavit signed by the license purchaser. (4-6-05)

~~**04.** **Completion of Form.** Vendor shall fill in all the information requested on the document, including the full name, complete address, gender, date of birth, and mark the box for the type of document for which applicant is applying. (3-20-97)~~

**054. Social Security Numbers.** Vendor shall require disclosure of social security numbers for any person who purchases a license. The social security number shall be used only as a unique number to assist the Department with matching licenses and tags sold to an individual. Disclosure of social security numbers to the Department is required by Section 73-122, Idaho Code, and the Department shall not use such numbers for any purpose other than that expressed herein. A person's social security number is considered confidential and will not be released to any person by the Department. (4-6-05)

**065. Vendor Employees.** Any employee of the vendor may issue documents, provided that the employee is instructed as to all applicable statutes and regulations. Vendor is responsible for employee training and for any violation of applicable statutes and regulations committed by employees. (3-20-97)

**076. Resident Privileges.** No one can claim Idaho resident privileges while claiming resident privileges in another state (except military personnel). (3-20-97)

**087. Negligence.** The issuing vendor must be sure that the license information is complete and is recorded before the license sale is final. Negligence in obtaining proof of residence or completion of the application portion of the license could constitute grounds for suspension of a vendorship. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**153. VOIDED AND CANCELLED DOCUMENTS.**

When an error is made in issuing a document, no correction, alteration, or erasure shall be made to the document. To void a document write "Void" on the document. Do not destroy any voided or canceled licenses. Cancel the licenses on the IWILD terminal through the cancel function. The original voided document and cancellation receipt shall be submitted to the Department at the week's end and is to be postmarked on or before the following Wednesday. If the original document is not received when due, the vendor may be charged for the value of the document.

~~(3-20-97)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**156. SUPPLIES.**

A vendor shall anticipate requirements for supplies of blank license stock, supplies, and other forms and order through the Idaho Wildlife Information Licence Data (IWILD) terminal, by mail or phone. It is the responsibility of the vendor to place orders early enough for the Department to process the request and ship the order by the most cost-effective means. (3-20-97)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**159. ~~TELECOMMUNICATION REIMBURSEMENTS TO VENDORS~~ INTERNET SERVICE PROVIDER (ISP).**

~~Each vendor must have a phone line available for the computerized license system. The Department shall prescribe the type of phone line service that is required by each vendor. If a data quality phone line is required for the computerized license system, vendors will reimburse the Department for one-half (1/2) of phone line installation costs, not to exceed two hundred dollars (\$200). The director is authorized to waive any or all of a vendor's phone line reimbursement if the director finds that a waiver is necessary to provide the public reasonable opportunity to obtain licenses within a twenty-five (25) mile radius of the proposed vendor location. Each License Vendor must provide their own Internet Service Provider (ISP) for the computerized license system. The ISP can either be dial-up or any type of high-speed. The Department strongly recommends a high-speed ISP. The License Vendor is responsible for all costs relating to the Internet connection.~~ (7-1-98)(\_\_\_\_)

**160. ~~TELECOMMUNICATION USAGE COST SHARING WITH VENDORS.~~**

~~**01. Vendors Which Issue or Are Expected to Issue Seven Hundred Eighty Licenses or More Per Year.** The Department will add to the weekly amount due from these vendors seven dollars and fifty cents (\$7.50) as their share of the weekly phone line charge. (3-20-97)~~

~~**02. Vendors That Issue or Are Expected to Issue Less Than Seven Hundred Eighty Licenses Per Year.** The Department will add to the weekly amount due from these vendors fifty cents (\$0.50) for each license issued in the prior seven (7) calendar days as their share of the weekly phone line charge. (3-20-97)~~

~~**03. Vendors That Also Have an On-Line Lottery Terminal.** Vendors that also have on-line lottery terminal will not be required to pay an amount as their share of the weekly telecommunication that is larger than what would be separately charged by the Department or lottery, whichever would be the greater. (3-20-97)~~

**1640. ELECTRIC POWER REQUIREMENTS.**

Vendors must have a "clean" power line available for the computerized license system. The power line cannot have any other electrical equipment running off the line ~~other than an on-line lottery terminal.~~ (3-20-97)(\_\_\_\_)

**1621. -- 999. (RESERVED).**



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.20 - SELECTION RULES OF NEW FISH AND GAME LICENSE VENDORS

DOCKET NO. 13-0120-0801

#### 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 36-104(b) and 36-301, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 recommends that the application process be simplified and streamlined to provide better response time to vendor applicants, and that the active vendor ceiling number be amended because of the decreased number of license vendors.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Craig Wiedmeier (208) 287-2704.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0120-0801

**101. APPLICATION.**

**01. Form.** The director will develop and provide, as necessary, a license vendor application form incorporating these rules. (3-20-97)

**02. Department.** (3-20-97)

**a.** Form. The License Section will send to the applicant the vendorship application form and transmittal letter ~~and concurrently notify the conservation officer within five (5) working days after it received the request~~ or a business may print the application form and transmittal letter from the Idaho Fish and Game website. (3-20-97)(\_\_\_\_)

**b.** Nonresponse by Applicant. ~~The License Section will contact the conservation officer if the completed Vendor application form has not been received sixty (60) days after the date of the transmittal letter.~~ The application sent out by the License Section will be considered void if ~~neither the conservation officer nor~~ the License Section has not received ~~a positive response~~ the application form and all other required information from the applicant ~~sixty (60) days after the date of the transmittal letter.~~ The applicant may request up to a thirty (30) day time extension to complete the form from the ~~administration bureau chief~~ License Operations Manager. (3-20-97)(\_\_\_\_)

**c.** Application Review -- Quarterly. The ~~administration bureau chief~~ License Operations Manager will quarterly evaluate vendor applications for approval or denial. The ~~administration bureau chief~~ License Operations Manager will have thirty (30) calendar days after receipt of all necessary forms from the applicant and department personnel to review and investigate the application. The date received plus thirty (30) days will determine into which quarterly evaluation each vendor application will be considered. Applications from the same area will be evaluated together to determine which will best meet the needs for a vendorship in that area. The evaluations and determination of approval or denial will be made quarterly on or before March 1, June 1, September 1, and December 1. Exceptions may be made by the Department when there are overriding Department and public needs for an immediate replacement of a license vendor in an area. This will primarily occur where there would be no vendor services available to the public within a twenty-five (25) mile radius. (3-20-97)(\_\_\_\_)

**d.** Field Review. ~~A conservation officer will meet with the applicant to review the application form and explain the license issuing requirements within thirty (30) calendar days from the applicant's initial contact with the officer. The application form must be signed and dated by the officer. After meeting with the applicant, the Conservation officer has fifteen (15) days to complete his review and forward all documents, including the applicant's application form and credit report, to supervisors for review. The application form and any other department documents are due to the License Section thirty (30) days after the officer's meeting with the applicant to review and complete the application form. After the License Section has received the application form and all other required information from an applicant, they will contact the Regional Conservation Officer for a recommendation on the application. The Regional Conservation Officer may contact the local Conservation Officer to conduct an on-site visit of the applicants business. The Regional Conservation Officer will have ten (10) days to provide the License Section with a recommendation on the application.~~ (3-20-97)(\_\_\_\_)

**03. Applicant.** (3-20-97)

**a.** Application Form. A license vendor applicant must complete the application form in its entirety. Any false or misleading response will void the application. (3-20-97)

~~**b.** Meeting with Conservation Officer. Within fifteen (15) days of the date on the application transmittal letter, the applicant must contact the conservation officer listed in the letter to arrange a meeting with him. If the applicant is unable to contact the conservation officer, the local regional office should be contacted to assign a conservation officer.~~ (3-20-97)

**eb.** Credit Rating. The applicant must submit the original copy of a current credit rating from a recognized credit bureau with the completed application form. (3-20-97)

**dc.** Form Submission. The completed vendorship application form and credit rating must be submitted

to the ~~conservation officer~~ License Section no later than ~~forty-five sixty~~ (4560) days after the date of the application transmittal letter. Failure by the applicant to meet these time frames will void the application. (3-20-97)(\_\_\_\_)

**ed.** Approved Application. If the application is approved the required vendorship contract, agreements, deposits, and bond (if required) must be received within sixty (60) days from the date of the applicant's approval letter. Failure to meet the deadlines will void the approval except for extenuating circumstances approved by the ~~administration bureau chief~~ License Operations Manager. (3-20-97)(\_\_\_\_)

**fe.** Denied Application. Any applicant who has been denied a license vendorship may appeal that decision to the director. The applicant may request the director to establish a hearing in accordance with the Administrative Procedures Act. (3-20-97)

**102. SELECTION.**

The following ~~criteria are established~~ factors will be considered for selecting an applicant to become a fish and game license vendor: (3-20-97)(\_\_\_\_)

**01. Low Numbered Vendors.** Applicants classified in lower-numbered vendor classifications will be given priority over applicants in higher-numbered classifications from the same general location. (3-20-97)

**02. Class Six Applicants.** Applicants classified as class six (6) will generally not be approved. They will be approved only when they have demonstrated a major significant public benefit to have a license vendorship at their location. (3-20-97)

**03. Unsettled Debts Reported.** Applicants who have unsettled debts reported and listed with a credit bureau will not be approved. Unsettled debts that are in dispute will not be considered against the applicant. (3-20-97)

**04. Surety Bond Needed.** Applicants who would otherwise qualify for a vendorship and have been in business less than three (3) years will be required to furnish the Department a ten thousand dollar (\$10,000) surety bond in the form and length as determined by the director. (3-20-97)

**05. Applicant Cooperation Required.** The applicant and its employees should exhibit a cooperative attitude toward the license issuing requirements; however, this shall not be the only rationale for denying a vendorship. (3-20-97)

**06. Permanent Place of Business Required.** Applicants who do not have a permanent place of business open and accessible to all segments of the public will not be approved. (3-20-97)

**07. Number of Existing Vendors in Area.** The number of existing vendors in the applicant's geographical area and their distance to the applicant. For the three (3) closest existing vendors, their hours and days of operation, classification, accessibility to the public, and other pertinent information, including their distance to the applicant, will be compared to the applicant. (3-20-97)

**08. Incorporated City.** If the applicant is in an incorporated city, the number of vendors in the city. (3-20-97)

**09. Unincorporated City.** If the applicant is located in an unincorporated area, the number of vendors within a twenty-five (25) mile radius. (3-20-97)

**10. Minimum Sales Volume Requirement.** The applicant's estimated license sales volume should meet the minimum sales volume requirements. If the applicant is seeking to replace an existing vendor at the prior vendor's location, the prior vendor's sales volume will be used to estimate the applicant's sales volume. (3-20-97)

**11. Satisfactory Past Performance Record Required.** If the applicant was a license vendor or the manager for a license vendor within the past five (5) years, the performance record for compliance with the requirements for license vendors must be satisfactory. (3-20-97)

**12. No Fish and Game Violations Allowed.** Neither the owner(s) nor store manager (if the applicant is a corporation) shall have had a fish and game violation other than an infraction within the past five (5) years. (3-20-97)

**13. Remote Location.** An applicant's location will be considered remote if there are no year-round vendors within a twenty-five (25) mile radius. (3-20-97)

**14. The Applicant's Hours of Operation.** Priority will be given in the following order: (3-20-97)

a. Seven (7) days per week, minimum fifty-six (56) hours. (3-20-97)

b. Six (6) days per week, minimum forty-eight (48) hours. (3-20-97)

c. Five (5) days per week, minimum forty (40) hours. (3-20-97)

d. Four (4) days per week, minimum thirty-two (32) hours. (3-20-97)

**15. Turnover in Vendorship of Location.** The number of times the location has had a turnover in the vendorship. Three (3) changes of ownership in any twenty-four (24) month period are considered excessive and the application may not be approved for this reason. (3-20-97)

**16. Length of Time in Business.** Except as otherwise provided in these rules, all applicants for a new license vendorship should have been established in business for at least one (1) year. The Department may waive this requirement in the case of a license vendor applicant located in a remote area if there is a Department or public need for license availability. Changes in ownership at established vendor locations will be handled on a case-by-case basis. (3-20-97)

**17. Distance to Fishing and Hunting Areas.** (3-20-97)

a. Distance zero (0) to ten (10) miles. (3-20-97)

b. Distance eleven (11) to twenty (20) miles. (3-20-97)

c. Distance twenty-one (21) to thirty (30) miles. (3-20-97)

d. Distance thirty-one (31) to forty (40) miles. (3-20-97)

e. Distance forty-one (41) miles and greater. (3-20-97)

**18. Need Determination.** Can the public reasonably obtain licenses/tags without this vendor. (3-20-97)

**19. Vendor Ceiling.** Qualified applications will be approved until the active vendor ceiling has been reached. (3-20-97)

**103. ACTIVE VENDOR CEILING.**

The number of active vendors, including approved vendor applicants, is limited to ~~five hundred fifty~~ four hundred seventy-five (50475). (3-20-97)( )

# **IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

## **14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

**DOCKET NO. 14-0101-0702**

### **NOTICE OF RESCISSION OF TEMPORARY RULE**

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded a temporary rule. The action is authorized pursuant to Section 54-2808, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the rescission of this temporary rule:

The change adopted in the temporary rule was also made in a previous docket that is now final and effective and replaces this temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rescission of temporary rule, contact Cherie Simpson at (208)334-3233.

DATED this 26th day of August, 2008.

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

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

#### **DOCKET NO. 14-0101-0801 (FEE RULE)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 15, 2008.

**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 54-2808, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The 2008 Legislature passed HB 350. These rule changes are necessary to comply with the law. The Board of Geologists is now contracting for services with the Bureau and changes to General Provisions were necessary to accommodate the move. The law was changed to allow for a change of expiration dates. The application deadline date was changed from 45 days to 90 days as the 45 days does not allow enough time to process the applications and order the examination material.

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

The 2008 Legislature passed HB 350. These rule changes are necessary to comply with the law. The Board of Geologists is now contracting for services with the Bureau and changes to General Provisions were necessary to accommodate the move. The law was changed to allow for a change of expiration dates.

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

Changes were made to General Provisions to remove the subsection for fees and to create Section 150 for fees currently being charged.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes should not be controversial and were discussed in an open meeting of the Board.

**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 22, 2008.

DATED this 18th day of August, 2008.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 14-0101-0801**

**100. GENERAL PROVISIONS.**

**01. Filing of Documents.** All correspondence, including remittances and renewal fees, shall be directed to the office of the Board. (3-26-08)

**02. Meetings.** The Board shall meet at least once each year at the call of the chairman; the Board shall elect a chairman, and vice-chairman, ~~and secretary~~ at such annual meeting. In addition to this annual meeting, the chairman may call special meetings from time to time when, in his opinion, it is deemed necessary, or upon the written request of any three (3) members of the Board. (3-26-08)(8-15-08)T

**03. Officers.** Officers elected from the Board shall be chairman, and vice-chairman, ~~and secretary. An assistant secretary may be selected who need not be a member of the Board.~~ (7-1-93)(8-15-08)T

**a.** The chairman shall be the executive head of the Board; shall, when present, preside at meetings; shall appoint committees; and shall perform all the duties pertaining to the office of chairman. (3-26-08)

**b.** The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and possess all the powers of the chairman. (7-1-93)

~~**e.** The secretary shall, with assistance of an assistant secretary and staff as authorized by the Board;~~ (7-1-93)

~~**i.** Keep correct minutes of the Board and furnish a copy to all members of the Board;~~ (7-1-93)

~~**ii.** Send notice of all regular and special Board meetings to each member in advance thereof;~~ (3-26-08)

~~**iii.** Examine each Application for registration and bring about necessary corrections or the supplying of missing or essential data in connection with such Application prior to consideration thereof by the Board;~~ (7-1-93)

~~**iv.** Address inquiries, where deemed necessary, to references or Applicants to verify qualifications, experience, or character;~~ (7-1-93)

~~**v.** Make arrangements, as required by the Board, for examinations, interviews, or hearings;~~ (7-1-93)

~~**vi.** Report to the Board members the result of every examination and other evidence of qualification of each Applicant;~~ (7-1-93)

~~**vii.** Prepare the required annual report and roster;~~ (7-1-93)

- viii. ~~Keep all records, including minutes, register of Applicants and Registrants, and roster;~~ (7-1-93)
- ix. ~~Receive and deposit all funds and fees, as provided by the Act, and keep records of all receipts and disbursements;~~ (7-1-93)
- x. ~~Attend to all official correspondence of the Board;~~ (7-1-93)
- xi. ~~Perform all other duties as prescribed by the Act or which normally pertain to the office of secretary.~~ (7-1-93)

**04. Committees.** Regular or special committees may be appointed by the chairman, as necessary, to perform special duties and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. (7-1-93)

**05. Quorum.** As provided in the Act, a quorum shall be at least three (3) members of the Board legally holding office at the time of meeting. Official business of the Board shall be conducted only at Board meetings with a quorum present. (7-1-93)

**06. Fees.** ~~The fees for registration under the Act shall be the following:~~ (3-13-02)

~~a. Application. A non-refundable fee for application under the Act shall be one hundred dollars (\$100).~~ (3-26-08)

~~b. Examination. The fee for the National examination is set at the current Association of State Boards of Geology (ASBOG) rate and is non-refundable.~~ (3-26-08)

~~c. Reexamination. The fee for reexamination of an Applicant failing the examination shall be the same as Paragraph 100.06.b. of these rules.~~ (3-26-08)

~~d. The fee for the initial certificate shall be twenty dollars (\$20) and the fee for replacing a lost, destroyed or mutilated certificate shall be twenty dollars (\$20).~~ (3-13-02)

~~e. The fee for annual renewal of registration shall be as determined each year by the Board, but shall not exceed one hundred dollars (\$100). Renewal fees are due annually by June 30. The amount of the first annual renewal fee for a Registrant may, at the discretion of the Board, be reduced appropriately on a prorated quarterly basis based upon the initial registration date in the preceding fiscal year.~~ (7-1-93)

~~i. The fee for annual renewal of registration for any Registrant seventy (70) years of age or older as of June 1 shall be half (1/2) the current renewal fee.~~ (3-26-08)

~~ii. The secretary shall notify each Registrant by mail, to the last recorded address, not later than June 1 of each year giving date of expiration of the Registrant's certificate and the amount of the renewal fee due by June 30 for the following year.~~ (7-1-93)

~~iii. Failure on the part of any Registrant to renew the certificate in June shall not deprive such Registrant of the right of renewal, but the fee to be paid for renewal after June 30 shall be increased as prescribed in the Act.~~ (3-26-08)

**076. Certificates.** Certificates of registration shall be issued to each Registrant, as prescribed by the Act, on forms adopted by the Board. Certificates shall be displayed by Registrants in their place of business. A new certificate may be issued by the Board, to replace one lost, destroyed or mutilated. Each certificate shall bear an individual number, as assigned to that particular Registrant by the Board, which number shall be included in the annual roster of Registrants prepared by the secretary. (7-1-93)

**087. Seals.** (7-1-93)



a. The official seal of the Board shall consist of a seal of the state of Idaho surrounded with the words "Board of Registration for Professional Geologists." (7-1-93)

b. The Board has adopted a similar seal for use by each registrant. The seal may be a rubber stamp, crimp, or electronically generated image. Whenever the seal is applied, the Registrant's signature and date shall also be included. If the signature is handwritten, it shall be adjacent to or across the seal. No further words or wording are required. A facsimile signature generated by any method will not be acceptable unless accompanied by a digital signature. SEE "APPENDIX A" AT END OF THIS CHAPTER. (3-26-08)

c. The seal, signature, and date shall be placed on all final specifications, reports, information, and calculations, whenever presented to a client or any public or governmental agency. Any such document presented to a client or public or governmental agency that is not final and does not contain a seal, signature, and date shall be clearly marked as "Preliminary," "Draft," "Not for Construction," or with similar words to distinguish the document from a final document. (3-26-08)

d. The seal, signature, and date shall be placed on all original documents. The application of the Registrant's seal, signature, and date shall constitute certification that the work thereon was done by him or under his supervision. Each plan or drawing sheet shall be sealed and signed by the Registrant or Registrants responsible for each sheet. In the case of a business entity, each plan or drawing sheet shall be sealed and signed by the Registrant or Registrants involved. The supervising professional geologist shall sign and seal the title or first sheet. Copies of electronically produced documents, listed in Paragraph 100.08.b. of these rules, distributed for informational uses such as for bidding purposes or working copies, may be issued with the Registrant's seal and a notice that the original document is on file with the Registrant's signature and date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the original document shall also be provided. Only the title page of reports, specifications, and like documents need bear the seal, signature, and date of the Registrant. (3-26-08)

e. The seal and signature shall be used by Registrant only when the work being stamped was under the Registrant's supervision. (3-26-08)

**09. Address Change.** Each Applicant and Registrant shall notify the Board within sixty (60) days of any and all changes of address, giving both old and new address. (7-1-93)

**10. Annual Board Report.** ~~An annual report~~ The Board shall be published by the Board and mailed to the governor, secretary of state, each Registrant, and to the public (upon request). The annual report shall contain, on its website, among other things: (7-1-93)(8-15-08)T

- a. Copy of the Act; (7-1-93)
- b. Rules of ~~procedure~~ the Board; (7-1-93)(8-15-08)T
- c. ~~Annual report of the Board, summarizing all transactions~~ Minutes of the meetings; (7-1-93)(8-15-08)T
- d. ~~Excerpts or summary of annual~~ Financial report; (7-1-93)(8-15-08)T
- e. Roster of Registrants; and (7-1-93)(8-15-08)T
- f. Code of ethics; ~~and~~ (3-26-08)(8-15-08)T
- ~~g. Current fee schedules.~~ (3-26-08)

**101. -- 1949. (RESERVED).**

**150. FEES.**  
The fees for registration under the Act shall be the following: (8-15-08)T

- 01. Application.** A non-refundable fee for application shall be one hundred dollars (\$100). (8-15-08)T
- 02. Initial Certificate.** The fee for the initial certificate shall be twenty dollars (\$20). (8-15-08)T
- 03. Examination/Reexamination.** The fee for the National examination is set at the current Association of State Boards of Geology (ASBOG) rate and is non-refundable. (8-15-08)T
- 04. Annual Renewal Fee.** Annual renewal fee shall be sixty dollars (\$60). (8-15-08)T
- 05. Annual Renewal Fee for Registrants Seventy (70) Years of Age or Older.** Annual renewal fee shall be one-half (1/2) of the current renewal fee for registrants seventy (70) years of age or older. (8-15-08)T
- 06. Reinstatement Fee.** Reinstatement fee shall be twenty-five dollars (\$25). (8-15-08)T
- 07. Duplicate Certificate Fee.** The fee for replacing a lost, destroyed, or mutilated certificate shall be twenty dollars (\$20). (8-15-08)T

**151. -- 159. (RESERVED).**

**160. RENEWAL OR REINSTATEMENT OF CERTIFICATE (RULE 160).**

- 01. Expiration Date.** All geologists certificates expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Certificates not so renewed will be cancelled. (8-15-08)T
- 02. Reinstatement.** Any certificate cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (8-15-08)T
- 03. Cancelled Certificate.** A certificate that has been cancelled for a period of more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (8-15-08)T

**161. -- 199. (RESERVED).**

**200. APPLICATION PROCEDURES.**

- 01. Applications.** Applications for registration shall be: (7-1-93)
- a.** Filed on a form or forms prescribed by the Board and accompanied by official transcripts, reference statements, and a signed code of ethics (SEE "APPENDIX B" AT END OF THIS CHAPTER); (3-26-08)
- b.** Filed at the office of the Board, accompanied by the required Application fee; (3-26-08)
- c.** Received by the Board, if for registration by examination, not less than ~~forty-five~~ ninety (4590) days prior to the date of examination; ~~(3-26-08)~~ (8-15-08)T
- d.** Subscribed and certified to by the Applicant under penalty of perjury as provided for by state law; and (7-1-93)
- e.** Applications not submitted in proper form, or which are incomplete, will not be accepted by the Board and will be returned to the Applicant by the secretary with a statement of the reason for return. (7-1-93)
- 02. Board Action.** Upon evaluation of the Application by the Board, including receipt of statements from references, each Application will be: (7-1-93)
- a.** Approved and the Applicant notified in writing of such approval and the granting of registration; or (7-1-93)
- b.** Approved and the Applicant scheduled for examination for registration, and so notified in writing;

or (7-1-93)

**c.** Denied with prejudice and the Applicant notified in writing by certified mail stating the reason for denial. In the event of denial of Application, the Application fee will be retained by the Board. (7-1-93)

**03. Appeal.** Upon notification by the Board that the Application has been denied or rejected, the Applicant, within thirty (30) days of receipt of such notice, may petition the Board for a hearing, under the provisions of Title 67, Chapter 52, Idaho Code. (3-26-08)

**04. Dates.** The date of application shall be the date it is delivered in person to the Board office or, if mailed, the date shown by post office cancellation mark. Qualifying education and experience of the Applicant, for examination and registration, shall be computed from the date of application as described above. (7-1-93)

**05. References.** Statements from personal references in Responsible Positions concerning the Applicant's technical ability and personal character, shall be received, as prescribed by the Act, prior to any action by the Board to approve an Application. Each statement must reflect in a positive way the technical and ethical merits of the Applicant. Applicants for the Fundamentals of Geology examination may fulfill this requirement with reference statements from geologists in Responsible Positions familiar with the ability and character of the Applicant as demonstrated in an academic setting. (3-26-08)

**06. Abandonment.** In the absence of special circumstances, the Board shall consider an Application abandoned when: (7-1-93)

**a.** The Applicant fails to submit the certificate fee within six (6) months after the date of the letter of notification of approval of registration; or (7-1-93)

**b.** The Applicant fails to appear for a scheduled examination without obtaining a postponement from the Board; or (7-1-93)

**c.** The Applicant, after two (2) such postponements, fails to appear for examination at the scheduled time. (7-1-93)

**07. Abandonment - Application Fees.** If, after abandonment of an Application, an Applicant wishes to reapply for registration, an entirely new Application shall be initiated and all previously paid Application fees shall be retained by the Board. (3-26-08)

**IDAPA 15 - OFFICE OF THE GOVERNOR  
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**15.02.02 - VOCATIONAL REHABILITATION SERVICES**

**DOCKET NO. 15-0202-0801**

**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, and the Rehabilitation Act of 1973, its 1998 amendments, and related 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 15, 2008.

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:

A change in certain rates and structure of the payment policy set forth at IDAPA 15.02.02.300 is necessary to render it consistent with the increasing costs the Commission is facing in order to contribute financial assistance to clients for the following specific services: education expenses, books and supplies, transportation, and bioptics. The Commission proposes increasing the upper limits it will contribute to clients for eligible expenses as follows:

1. Education expenses to be changed from a fixed fee to 90% of actual costs without exceeding Boise State University, Idaho State University, or the University of Idaho's actual fees;
2. Books and supplies to be changed from \$600 per federal fiscal year to the actual costs;
3. Transportation costs to be increased to \$200 per month within a 20-mile radius, and \$300 per month for a greater than 20-mile radius, of commuting miles from home; and
4. Bioptics will increase from \$700 to \$900.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nanna Hanchett, Rehab Services Chief, (208) 639-8354.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 12th day of August, 2008.

Angela Jones, Administrator  
Idaho Commission for the Blind and Visually Impaired  
341 W. Washington St.  
PO Box 83720, Boise, ID 83720-0012  
Phone: (208) 334-3220 / Fax: (208) 334-2963

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0202-0801**

**300. PAYMENT POLICY.**

**01. Upper Limits.** In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on 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: (4-2-08)

**a.** Education expenses - public in-state institutions. ~~Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment.~~ ( )

**#b.** Education expenses - private in-state institutions. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho ~~public and~~ private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school; ~~Three thousand three hundred dollars (\$3,300) Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher.~~ If the client receives ~~a Pell~~ any ~~Grant or scholarship,~~ it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (4-2-08)( )

**bc.** Education expenses - out-of-state institutions. 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) Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher.~~ If the client receives ~~a Pell~~ any ~~Grant or scholarship,~~ it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (4-2-08)( )

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

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 the Commission to have the client attend the out-of-state educational institution, the Commission, 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. (4-2-08)

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, the Commission 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 Commission regional office assisting the client. (4-2-08)

**ed.** Books and supplies. ~~Six hundred dollars (\$600) per federal fiscal year. This limit~~ Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship, it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (4-2-08)( )

**de.** Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: Two hundred dollars (\$200) plus actual cost of related procedures such as x-rays. (4-2-08)

ii. Psychological exam by licensed psychologist: Two hundred dollars (\$200) plus actual cost of

- psychometric tests. (4-2-08)
- iii. Ophthalmologist/Optomtrist exam: Two hundred dollars (\$200) plus actual cost of visual field exam or other necessary tests. (4-2-08)
- (1) Low vision exam: One hundred twenty-five dollars (\$125). (4-2-08)
- (2) Follow-up low vision consultation: Fifty-five dollars (\$55). (4-2-08)
- (3) Eye report: Twenty-five dollars (\$25). (4-2-08)
- iv. Eye glasses or contact lenses: Eighty dollars (\$80) for frames and the usual and customary cost for lenses and contact lenses. ~~Seven~~ Nine hundred dollars (~~\$700~~) for biotics. (~~4-2-08~~)(    )
- v. Audiologist exam: Eighty-five dollars (\$85). (4-2-08)
- vi. Physical exam (general basic medical): Sixty-five dollars (\$65). (4-2-08)
- ef.** Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at eighty dollars (\$80) per hour. (4-2-08)
- fg.** 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. (4-2-08)
- gh.** Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. (4-2-08)
- hi.** Transportation. (4-2-08)
- i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
- ii. Transportation costs associated with personal vehicle usage with or without personal driver: ~~One~~ Two hundred dollars (~~\$200~~) per month within a twenty (20) mile radius (in-town commuting) and ~~two~~ three hundred dollars (~~\$2300~~) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). The Commission does not provide funds for a client's purchase of a motor vehicle. (~~4-2-08~~)(    )
- iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
- ij.** 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. (4-2-08)
- i. The Commission 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. (4-2-08)
- 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. (4-2-08)
- jk.** Copy fees: Fifteen dollars (\$15) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)
- kl.** Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing Commission 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 the Commission. The Commission 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 the Commission. (4-2-08)

**lm.** On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)

**mn.** Computers including hardware and software: One thousand dollars (\$1,000) per case. If the Commission determines that a change in computers is necessary, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)

**no.** Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)

**op.** 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 Commission funds towards IPE related child care. (4-2-08)

**02. Exclusion of Surgery and Organ Transplantation.** (4-2-08)

**a.** The Commission 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. (4-2-08)

**b.** The Commission does not provide funds for a client's organ transplantation. (4-2-08)

**03. Authorization to Purchase.** When purchasing services from a vendor, the Commission 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 Commission 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 Commission 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. (4-2-08)

**04. Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the rehabilitation services chief of the Commission. (4-2-08)

**IDAPA 15 - OFFICE OF THE GOVERNOR  
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION**

**DOCKET NO. 15-0401-0801**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 24, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5309, 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 15, 2008.

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

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

The proposed rule changes are necessary to reflect amendments in governing statutes. Some of these amendments have been in effect since 2006, such as those involving the state compensation plan and the rights and privileges of veterans; others, like the amendments to the statute on hours of work and overtime pay, were enacted in 2008. The rule changes provide a benefit to all those who must use the rules. This benefit comes in the form of housekeeping changes, such as updating of the address and telephone information, updating references to the "department" and "administrator" and reformatting of the definition section in order to make the definitions more readily accessible and far less expensive to amend in the event that subsequent changes become necessary. The housekeeping changes also involved deletion of many definitions (some because they are redundant or unneeded; others because they have been relocated and incorporated into existing rules). Finally, the housekeeping changes include updating references in the rules to controlling provisions of statute or rule for ease of reference of the reader.

The proposed rules update agency address and telephone information; update references to "department" and "administrator" throughout the document in order to provide uniformity; delete redundant or otherwise unnecessary definitions, update definitions to correctly reflect current statutes and define new terms such as key employee, merit increase matrix, and military duty; update several rules pertaining to veterans (i.e., rules on preference, examination, placement on registers) to comply with statute; amend rules regarding calculation of pay, work hours, bonuses and shift differential to reflect amendments in code; incorporate rule on moving expense reimbursement as required by law; update rule regarding sick leave to correctly mirror statute, incorporate rule pertaining to bone marrow and organ donor leave with pay, and delete rules pertaining to medical/dental appointment leave, election leave, and earned administrative leave; define compensable hours and hours worked; and delete requirement that each agency adopt human resource policies on specified topics.

**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:

The temporary rule is necessary because the current rules used by the agencies are flawed in a number of areas and are not aligned with recent legislative action as reflected in 2008 Senate Bill 1252 and 2006 Senate Bill 1363.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Moberly, Human Resources Program Manager, (208) 429-5531.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August 2008.

Judie Wright, Administrator  
Division of Human Resources  
700 W. State St.  
P. O. Box 83720, Boise, ID 83720-0066  
Phone: (208) 854-3054 / Fax: (208) 334-2438

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-0801**

**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. ~~The mailing address is PO Box 83720, Boise, ID 83720-0066. The office telephone number of the Commission and the Division of Human Resources is (208) 334-2263. 429-5500 Additional phone numbers are: a and the toll-free number is 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 office FAX number is (208) 334-3182 2438 and e-mail address is idhr@idhr.idaho.gov.~~ ~~(3-16-04)(8-24-08)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS -- A THROUGH E.**

Each of the terms defined in these rules 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 or delegate for those responsibilities assigned by the administrator to a specific appointing authority. ~~(3-16-04)(8-24-08)T~~

**02. Agency Classification.** A classification of positions unique to an agency. (8-24-08)T

**023. Allocation.** The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

**034. 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)

**045. Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

**056. 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~~ agency. (Ref. Section 67-5302(3), Idaho Code) ~~(3-16-04)~~ (8-24-08)T

**067. 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)

**078. 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. (Ref. Section 65-506(3), Idaho Code and Rule 102.04) (3-16-04)~~

**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 Title 67, Chapter 53, 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~~ of a limited 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~~ agency. Such Temporary appointments also may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) ~~(3-16-04)~~ (8-24-08)T

**15. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (8-24-08)T

**156. 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)

~~**16. 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)

~~17. Classification Schedule. All classification specifications utilized in classified service listed by title, classification code, and pay grade to which allocated.~~ (3-16-04)

~~187. Classified Service. That body of positions in state departments agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments.~~ (7-1-87)(8-24-08)T

~~18. Commission. As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code.~~ (8-24-08)T

~~19. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules; Division of Human Resources and Idaho Personnel Commission rules and policies; and departmental agency policies governing employee pay.~~ (3-16-04)(8-24-08)T

~~20. Compensation Schedule. The pay grades established by Section 67-5309C, Idaho Code, the Division of Human Resources and associated rates of pay established in Rule 070.05. (Ref. Section 67-5309C, Idaho Code)~~ (3-30-01)(8-24-08)T

~~21. Consultant. An independent contractor who provides professional or technical advice, counsel, or service on a set fee basis. (Ref. Rule Section 050)~~ (3-16-04)(8-24-08)T

~~22. 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)

~~23. Departmental Classification. A classification of positions that is unique to a department.~~ (3-16-04)

~~242. Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule Section 190 of these rules.~~ (7-1-87)(8-24-08)T

~~253. 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)

~~26. 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)

~~27. Employee. Any person in the employ of a state department who is paid a salary or wages.~~ (4-5-85)

~~284. 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)(8-24-08)T

~~295. 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)

~~30. Factoring. The assignment of Hay evaluation points to a classification in accordance with Section 67-5309B, Idaho Code, and Rule 074.~~ (3-30-01)

**011. DEFINITIONS -- F THROUGH J.**

Each of the terms defined in these rules will 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. (8-24-08)T

**301. General Classification.** A classification of positions that is common to more than one (1) participating ~~department~~ agency. (3-16-04)(8-24-08)T

**302. Good Cause.** The conduct of a reasonable person in the same or similar circumstances. (7-1-87)

**03. Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. (8-24-08)T

**3304. Hiring List.** A hiring list is a subset of a register (~~Rule 010.61~~). A ~~hiring list~~ consisting of the top ten (10) individuals on the register, 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)(8-24-08)T

~~34. Hours Worked:~~ (7-1-87)

~~a. Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave or other approved leaves of absence, and excluding on-call time. (Ref. Rule 010.40) (3-30-01)~~

~~b. Travel time shall be compensated pursuant to policy set forth by the Board of Examiners. (3-30-01)~~

~~c. Attendance at lectures, meetings, training programs and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (5-15-85)~~

**305. Incumbent.** Any person holding a classified or non-classified position in state service. (7-1-87)

**306. 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~~ Section 050) (3-16-04)

~~37. Interested Person.~~ A person or department directly affected by a rule, statute or department action or inaction. (6-30-78)

~~38. Intoxication.~~ Being under the influence of alcohol, or misuse of medication or controlled substances. (Ref. Rule 190.01.f.) (3-30-01)

**3907. 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)

**012. DEFINITIONS -- K THROUGH O.**

Each of the terms defined in these rules will 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. (8-24-08)T

**01. Key Employee.** An individual specifically hired for an at-will or nonclassified position for which there is no, or only a limited, selection process. Examples may include 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) (8-24-08)T

**402. 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)

~~41. 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)~~

~~42. **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)~~

~~43. **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)~~

**4403. 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)

~~4504. **Merit Increase.** The advancement of an employee's compensation in accordance with Section 67-5309C(b)B, Idaho Code. (7-1-87)(8-24-08)T~~

**05. Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. (8-24-08)T

**06. Military Duty.** Training and service performed by an inductee, enlistee or reservist or any entrant into the armed forces of the United States, not including 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, when the call is for training only. (Ref. Section 65-502(6), Idaho Code) (8-24-08)T

**4607. 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)

~~47. **New Classification.** A classification that is not essentially described by any existing job classification. (3-16-04)~~

**408. 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)

**409. On-Call Time.** Time when an employee is required to carry a pager, cellular phone, or to leave work at home or with the ~~department~~ agency where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. (3-30-01)(8-24-08)T

~~50. **Overtime.** Those hours defined as such in Section 67-5302(19), Idaho Code, excluding any time, such as traded time and occasional or sporadic work, that is specifically excluded from the overtime calculation by federal law. (7-1-87)~~

**013. DEFINITIONS -- P THROUGH Z.** Each of the terms defined in these rules will 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. (8-24-08)T

**501. 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)(8-24-08)T

~~52. **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)~~

**02. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-

5309(n), Idaho Code.

(8-24-08)T

**503. 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)~~(8-24-08)T

~~**54. Promotion, In-Grade.** To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position which he or she occupies in one classification to a position in another classification having greater Hay points, more responsibility, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (3-16-04)~~

~~**55. Rating/Job Point Factoring.** The number of Hay evaluation points assigned to a classification in accordance with Rule 074. (3-16-04)~~

~~**56. 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.e.) (7-1-87)~~

~~**57. Reclassification of a Position.** A change of a position from the classification to which it is assigned to another classification. (3-16-04)~~

~~**58. Reclassification of an Employee.** Means a change in the classification assigned to the employee to properly reflect the duties and responsibilities assigned to that employee by an appointing authority. (3-30-01)~~

~~**59. Recruitment.** The process of seeking applicants for employment. (3-16-04)~~

**604. 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)

~~**6105. Register.** A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)~~

~~**62. Reinstatement.** The reappointment of a former or current classified employee pursuant to Rule 124. (3-16-04)~~

~~**6306. Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. (Ref. Rule 244) (3-16-04)(8-24-08)T~~

~~**6407. Respondent.** The party whose interests are adverse to those of the appellant. (7-1-93)~~

~~**65. Status.** The character of an employee's appointment. (7-1-77)~~

~~**6608. 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 Section 190 of these rules. (7-1-87)(8-24-08)T~~

~~**6709. 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 Section 152 of these rules. (3-16-04)(8-24-08)T~~

~~**6810. 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)~~

~~69~~**11.** **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)

~~70~~**12.** **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)

**13.** **USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (8-24-08)T

~~71.~~ **Veteran.** *Rule 020 defines veteran for the purpose of selection, hiring, and retention preference.* (3-16-04)

~~72~~**14.** **Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

~~014.~~ -- **018.** **(RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. VETERANS PREFERENCE.**

Except for key employee positions, Preference must be given to qualified veterans *who are residents of Idaho* in all initial employment actions including hiring, transfer, promotion, and retention except for confidential secretarial positions. (3-30-01)(8-24-08)T

**01. Qualified 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) To receive the preference, the person must have: (3-30-01)(8-24-08)T

**a.** Served on active duty in the armed forces during a war, in a campaign, or expedition for which a campaign badge has been authorized, or served on active duty during the period beginning April 28, 1952 and ending July 1, 1955; (8-24-08)T

**b.** Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; (8-24-08)T

**c.** Served on active duty as defined in 38 U.S.C. Section 101(21) in the armed forces during the period beginning on August 2, 1990 and ending on January 2, 1992; (8-24-08)T

**d.** Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred during the period beginning on September 11, 2001 and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom. (Ref. Section 67-502(14), Idaho Code, and 5 U.S.C. Section 2108); or (8-24-08)T

**e.** Served as may be further defined in 38 U.S.C. Section 101(11). (8-24-08)T

**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 Purple Heart recipients, and their widows, widowers, or spouses, when qualified under state law shall will have additional points added to a passing score and placed on the register in accordance with the provisions set forth in Rule Section 102 of these rules. (Ref. Rule Subsection 093.03, and Sections 65-502(2), 5063, and 5074(3), and 67-5309(f), Idaho Code)

~~(3-16-04)~~(8-24-08)T

~~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)~~

**043. Retention.** ~~War~~ Veterans (~~War-Era~~) (as defined in Title 65, Chapter 5, Idaho Code) ~~shall~~ will 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 Section ~~1401~~ and Section 65-503~~1~~, Idaho Code) ~~(3-16-04)~~(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. DUAL EMPLOYMENT.**

There ~~shall~~ will be no conflicting hours of work when a classified employee is employed by more than one (1) state ~~department~~ agency. The employee ~~shall~~ must obtain approval from all appointing authorities concerned prior to beginning dual employment. ~~(4-5-85)~~(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.**

Nothing in these rules ~~shall~~ prohibits the use of independent contractors or consultants ~~who are paid on a fee basis~~ for legal, medical, technical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state ~~department~~ agency. No position in the state classified service will be filled by a consultant or independent contractor. ~~(7-1-94)~~(8-24-08)T

~~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)~~

**021. Limited Use Only.** Individuals employed through contracts with temporary services or professional staffing agencies will be utilized only for short-term situations. (3-30-01)

**032. Conflict of Interest/Nepotism.** Agency policies regarding conflict of interest/nepotism should address the award of work to consultants and contractors. (See Sections 024 and 025 of these rules. Also Ref. Section 18-1359, Idaho Code.) (3-16-04)

**043. Not to Be Treated as Employees.** Independent contractors, their staff or consultants must 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~~ will assist appointing authorities in the analysis of positions in determining proper classification and ~~shall~~, at the determination of the administrator, will conduct independent classification reviews of the various ~~departments~~ agencies. ~~(4-5-85)~~(8-24-08)T



(BREAK IN CONTINUITY OF SECTIONS)

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 will submit proposed changes to the administrator. (3-30-01)

**02. Approval.** Each appointing authority, prior to establishing any new position within the ~~department~~ agency, ~~shall~~ will 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~~)(8-24-08)T

**03. Assignment to Pay Grade Required.** No person will 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)

(BREAK IN CONTINUITY OF SECTIONS)

070. COMPENSATION OF EMPLOYEES.

**01. Assignment to Pay Grade.** As a basis for pay equity, the Division of Human Resources will use a combination of point factoring and market data to determine the relative value of each classification. (Ref. Rule Subsection 074.01 and Section 67-5309B, Idaho Code) (8-24-08)T

~~02. The Hay System Factoring.~~ 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~~)(8-24-08)T

**023. Salary Surveys.** The Division of Human Resources will 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)

**034. Relevant Labor Markets.** Labor markets used for wage comparison ~~shall~~ will be based on ~~the normal~~ recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. (~~3-16-04~~)(8-24-08)T

**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, New Mexico, Oregon, Utah, Washington, and Wyoming. (~~3-16-04~~)(8-24-08)T

**c.** Recruitment and retention issues will be used to determine the need for additional special market surveys. (3-16-04)

~~04. 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~~)

05. **Compensation ~~Plan~~ Schedule.** Significant changes to components of the compensation plan ~~shall~~ will be presented in a public meeting after notice. ~~(3-30-01)~~(8-24-08)T

071. **COMPENSATION PLAN REVIEWS MERIT INCREASE MATRIX.**

Salary increases must be based on a merit increase matrix approved by the Division of Human Resources. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, and recruitment and retention awards are not subject to a matrix. (8-24-08)T

~~01. **Review of Compensation Schedule.** The Division of Human Resources in cooperation with the various appointing authorities shall conduct reviews of the compensation plan.~~ (3-30-01)

~~02. **Affirmation of Factoring.** In the review of classifications, the factoring of a class may be affirmed if there has been no significant change in the duties of the classification and the factoring appears to be correct.~~ (7-1-93)

072. **OPERATION OF COMPENSATION PLAN.**

01. **Authorized Pay Rate.** No employee in the state classified service ~~shall~~ will 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.~~ (3-16-04)(8-24-08)T

02. **Starting Salary.** The starting salary for a new appointee may be anywhere within the pay grade 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)(8-24-08)T

03. **Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator ~~pursuant to Section 67-5309(c)(b)(i), Idaho Code.~~ Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. ~~(3-16-04)~~(8-24-08)T

04. **Salary After Reappointment from Layoff.** ~~An e~~Employees appointed by the agency that laid them off ~~(Ref. Rule Subsection 101.01 and Rule Section 146)~~ will be paid in the current pay grade for the classification to which reappointed or at the same payrate ~~he or she~~ the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. ~~(3-16-04)~~(8-24-08)T

05. **Salary Upon Transfer.** (7-10-88)

a. A transfer between ~~departments~~ agencies ~~(Ref. Rule Section 125)~~ in the same classification or one 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)~~(8-24-08)T

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 ~~(Ref. Rule Section 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)~~(8-24-08)T

07. **Salary Upon Downward Reassignment.** When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (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 ~~65-5108 or 65-512,~~ Idaho Code, ~~shall~~ and USERRA will 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)~~(8-24-08)T

073. **CALCULATION OF PAY.**

**01. Standard Calculation of Pay.** For other than police, correctional officers, or fire employees, pay ~~shall be~~ is calculated in the following order: ~~(3-30-01)(8-24-08)T~~

- 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.~~ (8-24-08)T

**02. Shift Differential.** Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential ~~pay shall be calculated according to Rule 075 and is~~ paid in addition to any other compensation. (Ref. Sections 67-5302~~(1920)~~, 67-53298, Idaho Code; Rules ~~010.34, 010.417, 010.4257, 010.48, 010.50, and~~ Subsection 073.032) 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. ~~(3-16-04)(8-24-08)T~~

**023. 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 will~~ be compensated as described ~~above~~ in Subsections 073.01 and 073.02 of these rules, except that overtime ~~shall will~~ 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)(8-24-08)T~~

**034. Holiday Pay Calculation.** (7-1-87)

a. ~~All classified employees of like classification, shall be treated equally with reference to hours of employment. Paid time off for holidays, and vacation leave is a benefit and must be allocated in a substantially similar manner to all employees in the same classification.~~ (Ref. Section ~~67-5326~~ 59-1607, Idaho Code) ~~(3-30-01)(8-24-08)T~~

b. A full-time employee will 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 will 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. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, in both Paragraphs 073.03.b. and 073.03.d. of these rules, the holiday will not be counted toward the twelve (12) weeks of family medical leave.~~ ~~(3-16-04)(8-24-08)T~~

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)(8-24-08)T~~

**045. 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 Section 190 of these rules. ~~(3-16-04)(8-24-08)T~~

~~**05. Temporary Merit Increases.** Temporary merit increases shall not be calculated retroactively. (Ref. Section 67-5309C(b)(ii), Idaho Code) (7-10-88)~~

~~**06. Department Salary Administration Policies.** Each department shall adopt and file with the administrator current salary administration policies for the following actions to insure fairness and equity for all employees within that department: agency must develop a compensation plan. Each agency compensation plan must be designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (3-30-01)(8-24-08)T~~

~~**a.** Merit increases and bonuses (Section 67-5309C(b), Idaho Code, and Rule 073.05.); (7-1-94)~~

~~**b.** Reclassification (Rule 067); (4-5-85)~~

~~**c.** Demotions (Rule 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~~ for in these ~~following~~ rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. ~~(4-5-85)(8-24-08)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**075. SHIFT DIFFERENTIAL.**~~

~~**01. Eligibility.** (12-10-90)~~

~~**a.** Shift differential compensation shall be paid if fifty percent (50%) or more of an employee's assigned hours in a workweek occur between 6 p.m. and 7 a.m. Leave hours taken shall be regarded as having been assigned during the same hours that the employee would have worked. (12-10-90)~~

~~**b.** Shift differential compensation shall be paid for all hours worked by an 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~~ two thousand dollars (\$~~1~~2,000) may be awarded each fiscal year, in recognition of ~~excellent~~ exemplary performance. In extraordinary circumstances exceptions to the two thousand dollar (\$2,000) limit may be granted if approved in advance by the State Board of Examiners. A memo documenting such Documentation of the exemplary performance ~~should~~ and related bonus award must be provided to the employee and placed in ~~their~~ the employee's agency personnel file. (Ref. Sections 59-1603(7) and 67-5309C(b)(iii)D(1), Idaho Code) ~~(3-16-04)~~(8-24-08)T~~

~~02. **State Resource Savings Bonuses Employee Suggestion Award.** Appointing authorities may award ~~up~~ up to a total of twenty-five percent (25%) of the savings realized from an employee's idea to save taxpayer dollars, not to exceed one two thousand dollars (\$2,000) 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)D, Idaho Code) ~~(3-16-04)~~(8-24-08)T~~

~~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 must be intended to increase productivity, conserve state resources, reduce state costs, or improve the morale of state employees. ~~(3-16-04)~~(8-24-08)T~~

~~b. Suggestions that may deserve an award larger than two thousand dollars (\$2,000) and suggestions aimed at saving money outside the employee's state agency should be submitted ~~to~~ through the employee's agency first for screening and support, 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. Awards greater than two thousand dollars (\$2,000) must be approved in advance by the State Board of Examiners. ~~(3-16-04)~~(8-24-08)T~~

~~c. Employee suggestion awards may be funded from the expense category (personnel, operating, or capital) from which the savings were realized. (Ref. Section 67-5311(1), Idaho Code) ~~(8-24-08)T~~~~

~~078. -- 079. (RESERVED).~~

~~080. **RECRUITMENT.**~~

~~The administrator ~~shall~~ will cooperate with the appointing authority of each ~~department~~ agency and with the director of the Department of ~~Commerce and~~ Labor in the operation of a coordinated recruiting program. ~~(4-5-85)~~(8-24-08)T~~

(BREAK IN CONTINUITY OF SECTIONS)

**082. METHODS OF RECRUITMENT.**

For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, ~~department~~ agency 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)~~(8-24-08)T

**083. ~~(RESERVED)~~ MOVING EXPENSE REIMBURSEMENT.**

**01. Reimbursement Limitations.** The appointing authority may reimburse moving expenses for current or newly hired state employees in an amount less than or equal to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less. Moving expense reimbursements must comply with the State Board of Examiners' State Moving Policy and Procedures that are in effect at the time the move takes place. (8-24-08)T

**02. Exceptions to Reimbursement Limitations.** Exceptions to the expense reimbursement limits set forth in Subsection 083.01 of these rules may be granted if approved in advance by the appointing authority. (8-24-08)T

**084. ANNOUNCEMENT OF RECRUITMENT.**

**01. Distribution of Announcements.** The announcement of each open-competitive recruitment ~~shall~~ will 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 will~~ will be his ~~or her~~ responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that ~~department~~ agency prior to its expiration date. (Ref. Rule Section 169) ~~(3-16-04)~~(8-24-08)T

**02. Posting of Promotional Announcements.** The announcement for each promotional recruitment ~~shall will~~ will be supplied to the appointing authority of each affected ~~department~~ agency. It ~~shall will~~ will 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~~ agency prior to the expiration date. ~~(3-16-04)~~(8-24-08)T

(BREAK IN CONTINUITY OF SECTIONS)

**086. APPLICATIONS.**

**01. Form.** All applications ~~shall~~ must be filed in the form ~~prescribed~~ approved by the administrator. ~~(3-16-04)~~(8-24-08)T

**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. An application will also be considered timely if any Job Service or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources, and ensures that it is delivered to the Division of Human Resources by close of the next business day. (3-16-04)

**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 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)~~(8-24-08)T

**04. Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division of Human Resources maintains a register as a source for future job openings or for which a register is about to be established, provided ~~he or she~~ the veteran 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 65-5023, 65-507 and 67-5309(f), Idaho Code) ~~(3-16-04)~~(8-24-08)T

**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. Rule Subsections 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**092. 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 will be similar to corresponding open-competitive examinations and the same standards shall will be applied in determining scores. (3-30-01)

**02. Job Analysis and Confidentiality.** Contents of each examination shall will be determined by the Division of Human Resources' ~~staff~~ 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 will be divulged to unauthorized personnel by Division of Human Resources' ~~staff~~ or other personnel who have access to the examinations. ~~(4-5-85)~~(8-24-08)T

**03. Subject-Matter Experts.** The Division of Human Resources' ~~staff~~ may, at ~~their~~ its discretion, collaborate with appointing authorities, incumbents, subject-matter experts, or other qualified persons in the preparation of examinations. ~~(8-1-81)~~(8-24-08)T

**093. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.**

**01. Designation of Examiners.** The examinations will be conducted and rated by persons designated by the administrator. (8-1-81)

**02. Scoring of Examinations.** Each examination shall will be rated for final scores on the basis of one hundred (100) point maximum. The Division of Human Resources' ~~staff shall will~~ use appropriate statistical and professional techniques and procedures in determining passing points and final scores. ~~(3-30-01)~~(8-24-08)T

**03. Veterans Preference.** (3-16-04)

**a.** ~~War~~ Veterans and disabled veterans points, when applicable under state law, shall will 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 will 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 the widow or widower~~

remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points will be added to the earned rating of any disabled veteran, as defined in Section 65-502, Idaho Code, or to the unmarried widow or widower of the same, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers will 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 will be placed on the register in accordance with their augmented rating. (Ref. Sections 65-506 and 67-5309(f), Idaho Code)

~~(3-16-04)~~(8-24-08)T

b. ~~War~~ Veterans and disabled veterans preference points ~~shall~~ must not be ~~added to the raw score in order~~ used to achieve a passing score.

~~(3-16-04)~~(8-24-08)T

**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~~ will be computed in accordance with weights assigned the individual factors in the total examination.

~~(4-5-85)~~(8-24-08)T

**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. These applicants will be eligible for appointment and their placement on the register will take into account veterans' preference. When using registers developed in this manner, appointing authorities will 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 (Ref. Rule Subsection 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified.

~~(3-16-04)~~(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. ELIGIBILITY REGISTERS.**

Eligibility registers ~~shall be~~ are established by the Division of Human Resources' ~~staff~~ 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)~~(8-24-08)T

**101. TYPES OF ELIGIBILITY REGISTERS.**

There are four (4) kinds of eligibility registers:

(4-5-85)

**01. Reemployment Preference Registers.** Registers with reemployment preference ~~shall~~ for a given classification will contain the names of classified employees of permanent status who have been laid off or notified of a pending layoff except limited service appointments. (See ~~Rule~~ Sections 140 and 146 of these rules).

~~(3-16-04)~~(8-24-08)T

**02. Departmental Agency Promotional Registers.** ~~Departmental Agency~~ promotional registers for a given classification will contain the names of classified employees in a given ~~department~~ agency who successfully passed an ~~departmental~~ agency promotional examination for the class. (Ref. Rule Subsection 086.05)

~~(3-16-04)~~(8-24-08)T

**03. Statewide Promotional Registers.** Statewide promotional registers ~~shall~~ for a given classification will contain the names of all classified employees in all state ~~departments~~ agencies who successfully passed a statewide promotional examination for the class. (Ref. Rule Subsection 086.05)

~~(3-16-04)~~(8-24-08)T

**04. Open Competitive Registers.** Open competitive registers ~~shall~~ for a given classification will



contain the names of applicants who successfully passed an open competitive examination for the classification.

~~(3-16-04)~~(8-24-08)T

**102. PLACEMENT ON REGISTER.**

**01. Score Order.** Eligible candidates ~~shall~~ will 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)~~(8-24-08)T

**02. Veterans' Preference.** Eligible veterans or surviving spouses entitled to five (5) point preference ~~shall~~ will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03, and Section 65-5064, Idaho Code)

~~(3-16-04)~~(8-24-08)T

**03. Disabled Veterans' Preference.** Eligible ten percent (10%) or more disabled veterans, Purple Heart recipients, or surviving spouses entitled to ten (10) point preference ~~shall~~ will 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 will 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) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-506, Idaho Code)

~~(3-16-04)~~(8-24-08)T

**04. Veterans' Preference Points for Initial Appointment Only.** The additional points added by reason of veterans' preference ~~shall~~ will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-5064, Idaho Code) Initial appointments do not include:

~~(3-16-04)~~(8-24-08)T

- a.** Jobs held by patients, inmates, or students employed at a state institution; (8-24-08)T
- b.** Temporary or casual employment; or (8-24-08)T
- c.** An office filled by election. (8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. REMOVAL OF NAMES.**

**01. Reasons Specified.** Names may be removed from any eligibility register~~(s)~~ by the administrator because of:

~~(3-16-04)~~(8-24-08)T

**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)~~(8-24-08)T

**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)(8-24-08)T
- f.** Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-30-01)
- g.** Conviction of an eligible candidate of any felony. (3-30-01)
- h.** False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-30-01)
- i.** Dismissal of an eligible candidate from state service. (3-30-01)
- j.** Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (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)(8-24-08)T
- 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~~ agency and not been accepted for employment for good cause. (3-16-04)(8-24-08)T
- n.** Declining three (3) separate offers of employment or reemployment without good cause. (3-16-04)
- 02. Limitations and Duration of Removal.** The administrator will 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. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. ADEQUATE REGISTERS.**

A register with at least five (5) eligible candidates ~~shall be~~ is adequate. If no register exists or if there are less than five (5) eligible candidates, appointing authorities may: (3-30-01)(8-24-08)T

- 01. Selection from Inadequate Register.** Hire an eligible candidate listed on an inadequate register. (3-30-01)
- 02. Provisional Appointment.** Make a provisional appointment pursuant to ~~Rule~~ Subsection 119.054 of these rules. (3-16-04)(8-24-08)T
- 03. Request Certification.** Request the administrator authorize certification from an eligibility register for a comparable classification. (3-16-04)
- 04. Special Request.** Request specialized recruitment. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

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 an department agency are not permissible if there is an departmental agency reemployment preference register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who are willing to accept employment. (~~3-16-04~~)(8-24-08)T

~~032.~~ **Credited State Service.** Except as provided by Rules Section 040 and Subsection 250.02 of these rules, no classified credited state service ~~shall~~ accrues to employees for any service under temporary, project exempt, or nonclassified appointments. (~~7-1-87~~)(8-24-08)T

~~043.~~ **Probationary Period Required.** All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification ~~shall be~~ are probationary appointments except as otherwise provided in Rule Sections 040 and 150 of these rules. (~~3-16-04~~)(8-24-08)T

~~054.~~ **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~~)(8-24-08)T

**b.** In nominating a person for provisional appointment, the appointing authority will 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 will not be permitted unless specifically authorized by the administrator. (3-16-04)

**c.** Provisional incumbents will 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 will 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 Paragraph 140.031.c. of these rules. (~~3-16-04~~)(8-24-08)T

**03. Limited Service Agreement.** Appointing authorities making limited-service appointments ~~shall~~ must 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 ~~for~~ updated agreements are required every two (2) years. A copy of the agreement ~~shall~~ must be submitted to the administrator. (~~3-16-04~~)(8-24-08)T

(BREAK IN CONTINUITY OF SECTIONS)

**122. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).**

Temporary appointments ~~shall be~~ are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one (1) ~~department~~ agency. Both calculations ~~shall~~ begin on the date of the original temporary appointment. An applicant who is hired as a temporary employee from a hiring list created from a certified register, and serves at least one thousand forty (1,040) hours of continuous service, may be hired by the employing agency into that position in classified service as an entrance probationary employee without further examination. The announcement for the temporary position from which the certified register was created must indicate that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (Ref. Section 67-5302(33, Idaho Code)

~~(3-16-04)~~(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**124. REINSTATEMENTS.**

**01. Eligibility.** As determined by the administrator, a current or former employee ~~shall~~ will 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~~ Subsection 072.05 of these rules).

~~(3-16-04)~~(8-24-08)T

**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~~ an agency register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who have reemployment preference status. ~~(3-16-04)~~(8-24-08)T

~~(3-16-04)~~(8-24-08)T

**03. Examination.** The administrator 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. Rule Subsections 124.05 and 145.01). (3-16-04)

**05. Return from Military Duty.** An employee returning from military leave without pay (Ref. Rule Subsection 250.05) who is relieved or discharged from military duty under conditions other than dishonorable ~~shall~~ will 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, and 65-511 and 65-512~~, Idaho Code, 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~~ Subsection 072.08 of these rules. ~~(3-30-01)~~(8-24-08)T

~~(3-30-01)~~(8-24-08)T

**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)~~(8-24-08)T

**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 agency transfers. (Ref. Rule Section 150) ~~(3-16-04)~~(8-24-08)T

**04. Limitation.** Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rule Sections 140 through 147 of these rules. ~~(7-1-87)~~(8-24-08)T

**05. Transfer Between Departments Agencies.** An employee ~~shall be~~ is eligible for transfer between departments agencies 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 will~~ be transferred in accordance with Rules Subsections 230.04 and 240.02 of these rules. Salary treatment is covered by Rule Subsection 072.04 of these rules. ~~(3-16-04)~~(8-24-08)T

**06. Restriction.** Transfer of an employee between departments agencies is not permissible as long as there is a departmental agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification in the department agency to which transfer is desired with names of eligibles who are willing to accept reemployment. ~~(3-16-04)~~(8-24-08)T

**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)

**08. 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)~~(8-24-08)T

**126. RESIGNATION.**

**01. Notice.** A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the department appointing authority. ~~(6-11-89)~~(8-24-08)T

**02. Rescission and Reinstatement.** Once an employee has submitted a resignation, reinstatement is in the discretion of the department appointing authority as provided in Rule Section 124 of these rules. The department appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. ~~(3-16-04)~~(8-24-08)T

**03. Resignation in Lieu of Dismissal.** An employee may resign in lieu of being dismissed for cause. (7-1-93)

**127. -- 128. (RESERVED).**

**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 agency in an acting capacity whenever: ~~(3-16-04)~~(8-24-08)T

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 agency register with reemployment preference status (Ref. Rule Subsection 101.01) with names of eligibles who are willing to accept reemployment, nor adequate departmental agency register for the classification. ~~(3-16-04)~~(8-24-08)T

**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~~ **must** 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~~)(8-24-08)T

**04. 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. REDUCTION IN FORCE.**

**01. Conditions for Layoff.** An appointing authority may lay off an employee whenever necessary due to: (3-16-04)

**a.** Shortage of funds or work; (3-16-04)

**b.** Reorganization; (3-16-04)

**c.** The end of a limited service appointment; (3-16-04)

**d.** An employee's failure to complete interagency promotional probation when demotion options are not available; or (3-16-04)

**e.** The abolishment of one (1) or more positions (ref. Rule Section 066). (3-16-04)

**02. Layoff Decisions.** Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability, or political affiliation. Layoffs ~~shall~~ **must** be accomplished in a systematic manner with equity for the rights of classified employees and ~~shall~~ **must** not do away with an employee's right to problem solving, or appeal if the layoff is in fact a dismissal. (~~3-16-04~~)(8-24-08)T

**03. Assessment for Adverse Impact.** In planning and conducting a reduction in force, the appointing authority ~~shall~~ **must** consider the effect layoff units and positions to be abolished may have on the composition of the agency work force. If layoff units ~~and~~ or exclusions are established, adverse impact of protected classes ~~shall~~ **must** be assessed. The appointing authority ~~shall~~ **must** administer the reduction in force consistent with state and federal laws, and rules and guidelines governing adverse impact. (~~3-16-04~~)(8-24-08)T

**04. Layoff by Position.** Reduction in force ~~shall~~ **must** be by classification of position. (~~3-16-04~~)(8-24-08)T

**a.** Reduction in force may be limited to or specifically exclude employees appointed under selective certification, (Section 112) for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (3-16-04)

**b.** An appointing authority may petition the administrator to exclude an individual ~~or individuals~~ from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale and exclusions must be approved in advance by the administrator. (~~3-16-04~~)(8-24-08)T

**c.** Limited-service appointments are defined by the project, program, or function for which the appointments were made. When a limited service project is completed or funding concluded, the limited service

appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. (3-16-04)

**05. Layoff Unit.** Reduction in force ~~shall~~ must be ~~department~~ agency-wide or by organizational unit designated for layoff purposes. Layoff units (~~subdivisions of an agency for layoff purposes~~) are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority, ~~and~~ They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator. (3-16-04)(8-24-08)T

**06. Reduction of Hours Worked.** An involuntary reduction in the number of hours worked for a selected position ~~or positions shall~~ constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the ~~department~~ agency or approved layoff unit for a limited period of time, ~~i.e.~~ such as a furlough. (3-16-04)(8-24-08)T

**07. Downward Reclass.** A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower ~~shall~~ does not constitute a layoff. (Ref Section 067). More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary (Ref. Section 190). (3-16-04)(8-24-08)T

**141. CALCULATION OF RETENTION POINTS.**

There will be an evaluation of all employees in the classification in the ~~department~~ agency 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. Subsection 141.053), The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

<del>Overall Performance Level Documented As:-</del>	<del>Retention Points Earned Per Hour of Credited State Service</del>
<del>Superior or equivalent</del>	<del>.100</del>
<del>Very Good or equivalent</del>	<del>.075</del>
<del>Satisfactory or equivalent</del>	<del>.050</del>
<del>Needs Improvement or equivalent</del>	<del>.0</del>
<del>Unsatisfactory</del>	<del>.0</del>

<u>Exemplary Performance</u> - .100 points
<u>Solid Sustained Performance</u> - .075 points
<u>Achieves Performance Standards</u> - .050 points
<u>Does Not Achieve Performance Standards</u> - .0 points

(3-16-04)(8-24-08)T

**01. No Performance Evaluation on File for a Twelve-Month Period.** All credited state service for which there is no performance evaluation ~~shall~~ will 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)(8-24-08)T

- 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 are calculated in conformance with ~~Rule~~ Subsection 141.01 of these rules. (~~3-16-04~~)(8-24-08)T

**03. Qualified ~~War~~ Veterans (~~War-Era~~) Preference.** ~~War~~ Veterans (~~War-Era~~) as defined in Title 65, Chapter 5, Idaho Code, ~~shall~~ will 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~~)(8-24-08)T

**04. Calculation Date Cutoff.** No points will 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~~ is 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~~ is 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~~)(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.**

**01. Identification of Classifications.** The appointing authority will identify the classification(s) of positions to be reduced or eliminated. (~~3-16-04~~)(8-24-08)T

**02. Calculation of Retention Points.** Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions (Ref. Rule Subsection 0101.604). Retention points need not be calculated where layoff involves a single-incumbent class. (~~3-16-04~~)(8-24-08)T

**03. Order of Reduction in Force.** The order of reduction in force ~~shall~~ will be by type of appointment held by the employee in the affected classification(s) as follows: first to be laid off are provisional appointees, next the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees ~~shall~~ will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs ~~shall~~ will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention ~~shall~~ will be determined in the following sequence: (Ref. Rule Paragraph 150.02.c.) (~~3-16-04~~)(8-24-08)T

a. The employee with the highest total retention points for the past thirty-six (36) months. (3-16-04)

b. Random selection. (4-5-85)

**04. Notification to Affected Employees.** Each employee affected ~~shall~~ will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification ~~shall~~ will include a copy of the ~~departmental~~ agency layoff procedure and a copy of the computation of retention points



when required (Ref. Rule Subsection 142.02).

~~(3-16-04)~~(8-24-08)T

**05. Notification to Administrator.** The appointing authority ~~shall~~ **must** give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and ~~shall~~ **must** provide a list of persons affected by the layoff with their retention point calculations and ~~shall~~ **must** indicate which employees will be laid off.

~~(4-5-85)~~(8-24-08)T

**(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 Subsection 143.05) ~~shall will~~ 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~~ agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that ~~department~~ agency 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 Subsections 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)~~(8-24-08)T

**b.** When attempting to fill vacancies for a classification where a lay off occurred, the ~~department or~~ agency ~~shall will~~ provide an opportunity to interview and ~~shall will~~ make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule Subsection 150.02 of these rules and those that took a voluntary demotion in lieu of layoff.

~~(3-16-04)~~(8-24-08)T

**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 Subsection 072.043 of these rules.

~~(3-16-04)~~(8-24-08)T

**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)~~(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.**

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be

laid off. Demotion options are limited to a classification, or if deleted, its successor, in which the employee held permanent status in the ~~department~~ agency. Such demotion ~~shall~~ will not be permitted if it causes the layoff of an employee with greater retention points. ~~(3-16-04)~~(8-24-08)T

**01. Eligibility.** (3-16-04)

**a.** Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. (3-16-04)

**b.** Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. (3-16-04)

**02. Acceptance.** To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. (3-16-04)

**148. -- 149. (RESERVED).**

**150. PROBATIONARY PERIODS.**

**01. Probationary Period Required.** Except as provided in ~~Rule Section~~ Section 040 of these rules, every appointment and promotion to a classified position ~~shall be~~ is probationary, or in the absence of adequate registers, provisional. ~~(7-1-87)~~(8-24-08)T

**02. Types of Probationary Periods.** The probationary period serves as a working test period to provide the ~~department~~ agency 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)~~(8-24-08)T

**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~~ is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who ~~shall~~ must serve two thousand eighty (2,080) hours. ~~(3-30-01)~~(8-24-08)T

**b.** Promotional probation is the probationary service required when an employee is promoted, the duration of which ~~shall be~~ is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who ~~shall~~ must serve two thousand eighty (2,080) hours. ~~(3-30-01)~~(8-24-08)T

**c.** Voluntary probation is ~~the probationary period negotiated an agreement~~ between employees ~~seeking inter-agency transfer, voluntary demotion, and/or reinstatement~~ and the ~~hiring~~ appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. 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)~~(8-24-08)T

**03. Extension of Probationary Period.** Upon ~~petition by an appointing authority that demonstrates~~ written request demonstrating 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 Extension must be received by the administrator occur 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)~~(8-24-08)T

**04. Interruption of Probationary Period.** The probationary period in any classification must be completed within a single ~~department~~ agency uninterrupted by ~~resignation,~~ termination (Ref. Rule Subsection

152.02) or dismissal (Ref. Rule Section 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (~~3-16-04~~)(8-24-08)T

**05. Acting and Temporary Service Credit.** At the request of the hiring agency, the administrator will allow temporary and acting appointment service time in a given classification to be used toward fulfilling the entrance probationary requirement 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 Rule Sections 122 and 129 and Subsection 150.01) (8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. SEPARATION DURING PROBATION.** (3-30-01)

**01. Notification.** If a probationary employee does not serve satisfactorily, the appointing authority, ~~shall~~ must, 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 Subsection 210.04) (~~3-16-04~~)(8-24-08)T

**02. During Entrance and Voluntary Probation.** (3-30-01)

**a.** An employee who does not serve satisfactorily during the entrance or voluntary probation ~~shall~~ must 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 Subsection 210.04) (~~3-16-04~~)(8-24-08)T

**b.** Notice to the employee of termination for unsatisfactory service ~~shall~~ must be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (~~7-1-87~~)(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. Rule Sections 151, 152-03, and 153) (~~3-16-04~~)(8-24-08)T

**02. Tenure of Employment.** All employment in the state classified service ~~shall be~~ is without definite term except where the term may be specified by law, or under conditions of a limited-service appointment. (Ref. Rule Section 120) (~~3-16-04~~)(8-24-08)T

**160. -- 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~~ must be filled by the promotion of an employee in the ~~department~~ agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (~~3-30-01~~)(8-24-08)T

**b.** Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule Subsection 101.03) or an open competitive register (Ref. Rule Subsection 101.04) whenever he ~~or she~~ determines that such an appointment will best serve the interests of the ~~department~~ agency.  
(~~3-16-04~~)(8-24-08)T

**c.** Departmental Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an departmental agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification with names of eligible candidates who are willing to accept reemployment.  
(~~3-16-04~~)(8-24-08)T

**02. Interdepartmental Agency Promotions.** All interdepartmental interagency promotions shall must be made using statewide promotional registers (Ref. Rule Subsection 101.03)  
(~~7-1-87~~)(8-24-08)T

**03. Eligibility for Promotion.** Promotional appointees must have permanent status (Ref. Rule Section 159) and must meet the minimum qualifications of the promotional classification.  
(~~3-16-04~~)(8-24-08)T

**04. 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 occupied in one classification to a position in another classification having greater 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.  
(8-24-08)T

**170. -- 178. (RESERVED).**

**179. DEMOTIONS.**

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. 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~~)(8-24-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**190. DISCIPLINARY ACTIONS.**

**01. Cause for Disciplinary Actions or Separation From State Service.** Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment:  
(~~3-16-04~~)(8-24-08)T

**a.** Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the ~~department~~ agency or the Division of Human Resources and Idaho Personnel Commission.  
(~~3-16-04~~)(8-24-08)T

**b.** Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards.  
(~~4-5-85~~)(8-24-08)T

**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~~)(8-24-08)T

**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~~ agency.  
(~~4-5-85~~)(8-24-08)T

**f.** Intoxication or being under the influence of alcohol, or the misuse of medications or controlled

substances, while on duty.

~~(4-5-85)~~(8-24-08)T

- 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)~~(8-24-08)T
- 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~~ in Subsection 190.01 of these rules. Each suspension for investigation ~~shall~~ will 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)~~(8-24-08)T

**03. Disciplinary Suspension.** An appointing authority may suspend without pay an employee for disciplinary action for causes enumerated above. Disciplinary suspension of an employee with permanent status ~~shall be~~ is subject to appeal by the employee to the Commission.

~~(3-16-04)~~(8-24-08)T

**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~~ must 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)~~(8-24-08)T

**05. Notice To Administrator.** Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he ~~or she shall~~ must notify the employee and the administrator concurrently in writing; and ~~shall~~ must set forth the specific rule(s) violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule Subsection 190.02) may be made without prior notice to the employee; in this case, the appointing authority ~~shall~~ must notify the administrator as soon as practical.

~~(7-1-87)~~(8-24-08)T

**191. -- 199. (RESERVED).**

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures.

(3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the *department agency*. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions are appealable in accordance with *Rule Section 201 of these rules.* ~~(3-30-01)~~(8-24-08)T

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions *are may not appealable be appealed* to the Commission except as authorized by Section 67-5316, Idaho Code. ~~(3-16-04)~~(8-24-08)T

02. Establishment of *Departmental Agency Problem-Solving and Due Process Procedures*. Each participating *department shall agency must* maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and ~~this~~ *Section 200 of these rules.* ~~(7-1-98)~~(8-24-08)T

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee *shall must* file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the *department agency* is strongly encouraged to waive any time limits. (Ref. Rule *Subsection 200.03*). The time limit for filing *shall will* be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The *department agency* may accept a filing that is or appears to be filed late. *Department Agency* policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. ~~(3-16-04)~~(8-24-08)T

04. Elements of the Problem-Solving Procedure. The procedure *shall must* contain a statement from the *department agency* head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement *shall must* also provide a means whereby *department agency* representatives can obtain timely authority, if needed, to resolve the matter. The procedure *shall must* require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure *shall must* provide for such additional levels of management as are appropriate in the *department agency*. The procedure *shall must* also provide for the use of an impartial mediator upon agreement by the employee and *department agency*. Timelines *shall must* not exceed five (5) working days between each step. The procedure *shall must* also inform the employee that he ~~or she~~ is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative *shall be is* expressly prohibited. This procedure *shall does* not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1), Idaho Code; Rule *Sections 152 and 153*). ~~(3-16-04)~~(8-24-08)T

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each *department's agencies's* problem-solving procedure *shall must* provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure *shall must* expressly prohibit sexual harassment and discrimination. Employees *shall must* be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure *shall must* designate a specific person or persons to receive and investigate such filings, and *shall must* require that the investigation and resolution of them be conducted with maximum regard for confidentiality. ~~(7-1-98)~~(8-24-08)T

06. Elements of Due Process Procedure. An *department agency* must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an *department agency* must provide notice of the

contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice ~~shall~~ must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond ~~shall~~ must not occur later than ten (10) working days after the employee has received notice, unless both the employee and ~~department~~ agency agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, ~~shall~~ must make and implement the ~~department's~~ agencies's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and ~~department~~ agency agree otherwise in writing. The procedure ~~shall~~ must inform the employee of his ~~or her~~ right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure ~~shall~~ must also provide for the use of an impartial mediator upon agreement by the employee and ~~department~~ agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code; Rule Sections 150 through ~~Rule~~ 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision ~~shall~~ must also be sent to the administrator concurrently. ~~(3-16-04)(8-24-08)T~~

**07. Notification.** A copy of the approved problem-solving and due process procedures ~~shall~~ must be furnished and explained to each employee with permanent, provisional or entrance probationary status in the ~~department~~ agency concerned. ~~(7-1-98)(8-24-08)T~~

**08. Assistance to ~~Departments~~ Agencies.** The administrator ~~shall~~ will assist ~~departments~~ agencies whenever requested in the development or revision of their ~~departmental~~ agency problem-solving and due process procedures. ~~(7-1-98)(8-24-08)T~~

## **201. APPEAL PROCEDURE.**

**01. Idaho Rules of Administrative Procedure.** In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Sections 270 and 271 of these rules. ~~(3-16-04)~~

**02. Filing of Appeal and Appearances.** Every appeal filed with the Commission ~~shall~~ must be written. The appeal ~~shall~~ must be filed at the Division of Human Resources which serves as the office of the Commission, and ~~shall~~ must state the decision that is being appealed and the action requested of the Commission. The Commission ~~shall~~ must serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ~~(3-16-04)(8-24-08)T~~

**03. Time for Appeal.** An appeal from a decision of an appointing authority ~~shall be~~ is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the ~~departmental~~ agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision ~~shall~~ constitutes completion of the ~~departmental~~ agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. ~~(3-16-04)(8-24-08)T~~

**04. Non-Jurisdictional Appeals.** Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his ~~or her~~ designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to ~~Rule~~ Subsection 202.01 of these rules. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ~~(3-16-04)(8-24-08)T~~

**05. Setting of Hearing.** Within fifteen (15) days after receiving the appeal from the Commission, the

hearing officer ~~shall~~ must consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. ~~(3-16-04)~~(8-24-08)T

**06. Filing of Documents.** Once an appeal is referred to the hearing officer, all documents relating thereto ~~shall~~ must be filed directly with the hearing officer during the pendency of the appeal. Copies of all documents submitted ~~shall~~ must be provided simultaneously to opposing counsel and unrepresented parties. ~~(7-1-87)~~(8-24-08)T

**07. Burden of Proof.** In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. (7-1-87)

**08. Open Hearing.** Every hearing ~~shall be~~ is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney. ~~(3-16-04)~~(8-24-08)T

**09. Protective Orders.** The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. (7-1-93)

**10. Decision of Hearing Officer.** The hearing officer ~~shall~~ must issue a decision in the form of a preliminary order. The preliminary order ~~shall~~ must explain the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings ~~shall~~ must be filed at the office of the Commission. A copy of the hearing officer's decision ~~shall~~ must be promptly sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. ~~(3-16-04)~~(8-24-08)T

**11. Procedure for Award of Attorney Fees and Costs.** As part of his preliminary order, the hearing officer ~~shall~~ must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party ~~shall~~ must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum ~~shall~~ must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs ~~shall~~ must be awarded. Objections to the award of attorney fees and costs ~~shall~~ must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer ~~shall~~ must conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing ~~shall be~~ is required. The hearing officer ~~shall~~ determines the amount of the award and ~~shall~~ must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer ~~shall~~ must issue his~~her~~ decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. ~~(3-16-04)~~(8-24-08)T

**12. Factors Considered in Award of Attorney Fees and Costs.** The following factors ~~shall be~~ are considered in the determination of an award of attorney fees and costs: ~~(12-10-90)~~(8-24-08)T

- a. The time and labor required; (12-10-90)
- b. The experience and ability of the attorney; (12-10-90)
- c. The prevailing charges for like work; (12-10-90)
- d. The amount involved and the results obtained; (12-10-90)
- e. Awards in similar cases; and (12-10-90)
- f. Any other factor that appears pertinent to the award. (12-10-90)



(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 must* take prompt action to investigate. If the complaint is *department agency* 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)(8-24-08)T~~

**204. -- 209. (RESERVED).**

**210. PERFORMANCE EVALUATIONS.**

**01. Performance Evaluations.** Each *department shall agency must* 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)(8-24-08)T~~

**02. Approval of Form.** The Division of Human Resources' staff *shall will* 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)(8-24-08)T~~

**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 must* be discussed with affected employee who *shall will* be allowed opportunity to submit written comments regarding the evaluation contents. ~~(3-16-04)(8-24-08)T~~

**04. Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases and bonuses (Ref. Section 67-5309~~C~~**B**(~~bd~~), Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule Section 151). Other uses of performance evaluations are optional with the appointing authority. ~~(3-30-01)(8-24-08)T~~

**05. Evaluation Schedule.** All classified employees *shall must* 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(~~bh~~) and (~~ij~~), Idaho Code.) Part-time employees *shall must* be evaluated on an annual basis. ~~(3-30-01)(8-24-08)T~~

**06. Retention of Evaluation.** A copy of the performance evaluation *shall must* be retained in *departmental agency* records, and a copy *shall must* be furnished to the employee. The performance rating *shall must* 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 must* be copied and forwarded with the employee when an interagency promotion, demotion or transfer occurs. ~~(3-16-04)(8-24-08)T~~

**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 shall* maintains a

service record which ~~shall~~ must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(n), Idaho Code) ~~(3-16-04)~~(8-24-08)T

**b.** Service records or a facsimile thereof for classified employees ~~shall~~ must be maintained permanently by the administrator. ~~(3-30-01)~~(8-24-08)T

**c.** Any employee may at all reasonable times during business hours review his ~~or her~~ service record maintained in the Division of Human Resources or maintained in any ~~department~~ agency. Except for material used to screen and test for employment, all information maintained in an employee's service record ~~shall~~ must 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)~~(8-24-08)T

**02. Administrative Records.** The administrator ~~shall~~ must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. ~~(3-16-04)~~(8-24-08)T

**03. Employee Personnel Action Documents.** The appointing authority ~~shall~~ must 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)~~(8-24-08)T

**04. Transfers, Reemployment and Promotions Between ~~Departments~~ Agencies.** 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~~ is 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)~~(8-24-08)T

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~~ are 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)~~(8-24-08)T

**02. Rate of Accrual.** All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) ~~shall be~~ are counted in determining leave accrual rate. ~~(4-5-85)~~(8-24-08)T

**03. Mutual Agreement.** Vacation leave requested by the employee may be used only when approved by the ~~department~~ agency. The employee and the ~~department shall~~ agency must mutually agree upon such time or times when vacation leave ~~will~~ least interferes with the efficient operation of the ~~department~~ agency taking into consideration the vacation preference of the employee. ~~(7-1-87)~~(8-24-08)T

**04. ~~Interdepartmental~~ Interagency Transfer.** An employee who is transferred from one state ~~department~~ agency to another ~~department shall~~ agency will be credited with accrued vacation leave by the receiving ~~department~~ agency at the time of transfer. ~~(3-30-01)~~(8-24-08)T

231. -- 239. (RESERVED).

240. SICK LEAVE.

**01. Eligibility.** Sick leave ~~shall be~~ is earned in accordance with Section 67-5333, Idaho Code. Sick leave ~~shall~~ must only be taken in pay periods subsequent to being earned. ~~(3-30-01)~~(8-24-08)T

**02. ~~Interdepartmental~~ agency Transfer.** An employee who is transferred from one state ~~department~~ agency to another ~~shall~~ will be credited by the receiving ~~department~~ agency with the amount of sick leave accrued at the time of transfer. ~~(3-30-01)~~(8-24-08)T

**03. Reasons for Use.** Sick leave ~~shall~~ must only be used in cases of actual illness or disability or other

medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage, or legal guardian. ~~(3-16-04)(8-24-08)T~~

~~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)~~

**054. Serious Medical Conditions.** Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule Section 242) ~~(3-30-01)(8-24-08)T~~

**065. 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)(8-24-08)T~~

**076. 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)(8-24-08)T~~

**087. 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 Section 190 and Section 67-5333, Idaho Code) ~~(3-16-04)(8-24-08)T~~

## 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~~ will be given the choice of either: ~~(8-24-08)T~~

**a.** ~~1) Leave of absence without pay while receiving workers compensation; or~~ ~~(8-24-08)T~~

**b.** ~~2) Utilizing a portion of accrued sick leave to supplement workers compensation to maintain his or her regular salary; however, 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)(8-24-08)T~~

**02. Layoff After ~~Six Months'~~ Twelve Weeks' Disability.** If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to return to work after ~~six twelve (6)12 months' weeks'~~ absence or when accrued sick leave has been exhausted, whichever is longer, the employee's position ~~shall will~~ be declared vacant ~~unless otherwise prohibited by state or federal law. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work.~~ (Ref. Rule Subsection 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)(8-24-08)T~~

**a.** ~~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. If an employee is not eligible for the protections of the Family and Medical Leave Act (FMLA), the employee may only take a maximum of twelve (12) weeks absence due to their disability every twelve (12)-month period. The period of absence for such an employee is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks and return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence.~~

~~(3-16-04)(8-24-08)T~~

- b. Conditional releases will be considered in accordance with the Americans with Disabilities Act. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ are treated as such for sick leave purposes. Maternity and paternity leave ~~shall be~~ are 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)(8-24-08)T~~

**02. Determination of Disability Period.** The employee's physician ~~shall be~~ is considered the primary authority in determining the disability period insofar as compensable sick leave is concerned. ~~(3-16-04)(8-24-08)T~~

**03. Additional Time Off.** Maternity and paternity leave preceding and following the time that the person is disabled ~~shall be~~ is leave without pay unless the employee elects to use accrued vacation leave, ~~earned administrative leave~~ or compensatory time off for overtime. ~~(3-16-04)(8-24-08)T~~

**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 Section 242) (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ agency. The request for leave must be in writing and must establish reasonable justification for approval. ~~(3-16-04)(8-24-08)T~~

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, earned administrative leave or compensatory time off for overtime before commencing leave without pay. (Ref. Section 240) ~~(3-16-04)(8-24-08)T~~

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~~ will be paid for such accruals in accordance with Sections 67-5337~~4~~ and 67-5329~~(3)8~~, Idaho Code. ~~(7-1-87)(8-24-08)T~~

~~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)~~

~~032. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types shall will be used to the extent necessary to avoid leave without pay: accrued compensatory time; earned administrative leave; and vacation. If abuse of sick leave is suspected see Rule Subsection 240.087 of these rules. (3-16-04)(8-24-08)T~~

~~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 military duty ordered or authorized under the provisions of law, are 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)(8-24-08)T~~

~~054. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his or her position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule Subsection 124.05 of these rules. The employee shall will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (3-16-04)(8-24-08)T~~

~~065. Administrative Leave of Absence 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. 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 is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: (8-24-08)T~~

~~a. Vacation leave; (8-24-08)T~~

~~b. Sick leave; (8-24-08)T~~

~~c. Special leave situations; and (8-24-08)T~~

~~d. Compensatory time off for overtime worked. (4-5-85)(8-24-08)T~~

~~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(l), Idaho Code). (12-10-90)~~

~~**e.** 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~~ is not ~~be~~ considered absent from duty. The employee ~~shall~~ is not ~~be~~ entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee ~~shall~~ must be reimbursed by his ~~or her~~ respective ~~department~~ agency in accordance with ~~department~~ agency travel regulations.

~~(3-16-04)~~(8-24-08)T

**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~~ must be permitted to attend. The employee may use accrued leave or leave without pay.

~~(3-30-01)~~(8-24-08)T

**c.** Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he ~~or she shall~~ will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee ~~shall be~~ is 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)~~(8-24-08)T

**d.** Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an ~~departmental~~ agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding ~~shall~~ will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties.

~~(7-1-98)~~(8-24-08)T

**e.** Notification. An employee summoned for court and jury service or requested to serve as a grievance panelist, witness, or representative ~~shall~~ must notify his ~~or her~~ supervisor as soon as possible to obtain authorization for leave of absence.

~~(7-1-87)~~(8-24-08)T

~~**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)~~

~~**107.** Religious Leave. Appointing authorities shall will make reasonable accommodations to an employee's need for leave for religious observances. Such leave shall be is charged to the employee's accrued vacation leave or compensatory time off for overtime. (4-5-85)~~(8-24-08)T

~~**108.** 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~~ are authorized administrative leave with pay (~~Ref. Rule 250.06~~) to cover their scheduled hours of work during the closure or inaccessibility.

~~(4-5-85)~~(8-24-08)T

~~**b.** Compensation for extra hours worked. An employee who works at a state facility during declared closure or inaccessibility shall be, in addition to regular salary, granted time off equal to the number of hours worked. If overtime is involved, it shall be compensated as provided by Section 67-5329, Idaho Code. (4-5-85)~~

~~**eb.** 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 will be charged to administrative leave with pay.~~

*(Ref. Rule 250.06)*

~~(3-16-04)~~(8-24-08)T

**1209. Red Cross Disaster Services Leave.** Employees who have been certified by the American Red Cross as disaster service volunteers ~~shall~~ will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code.

~~(3-30-01)~~(8-24-08)T

**130. Employee Assistance Program Leave.** Up to two (2) hours per visit ~~shall~~ will be granted for utilization of the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program. ~~EAP leave shall be coded as MDA.~~  
*(Ref. Rule 240.04).*

~~(3-30-01)~~(8-24-08)T

**11. Bone Marrow and Organ Donor Leave With Pay.**

(8-24-08)T

**a.** Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee.  
*(Ref. Section 67-5343, Idaho Code)*

(8-24-08)T

**b.** Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. *(Ref. Section 67-5343, Idaho Code)*

(8-24-08)T

251. -- 259. (RESERVED).

**260. COMPENSABLE HOURS.**

**01. Biweekly Employees.** With the exception of holiday leave, no leave may be used if it results in pay in excess of the employee's regularly scheduled work week.

(8-24-08)T

**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.

(8-24-08)T

**261. HOURS WORKED.**

**01. Hours in Performance of Job.** Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave other approved leaves of absence, and excluding on-call time.

(8-24-08)T

**02. Travel Time.** Travel time is compensated pursuant to policy set forth by the Board of Examiners.

(8-24-08)T

**03. Hours Outside of Regular Working Hours.** 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.

(8-24-08)T

**2602. 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~~ agency, the ~~department(s)~~ agency employing the employee when the overtime occurs ~~shall be~~ is liable for compensatory time off or cash compensation as provided by law.

~~(7-1-87)~~(8-24-08)T

**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, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(~~4920~~), Idaho Code. Overtime does not include any time, such as traded time, or occasional or sporadic work, which are excluded from the overtime calculation by federal law.

~~(7-1-87)~~(8-24-08)T

**03. Modification of Workweek or Schedule.** No ~~department shall~~ agency will alter a previously established work week for the purpose of avoiding overtime compensation. An ~~department~~ agency may modify the employee's regular schedule of work to avoid or minimize overtime.

~~(7-1-87)~~(8-24-08)T

~~2643.~~ -- 269. (RESERVED).

**(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)~~(8-24-08)T

**~~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

## 16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

DOCKET NO. 16-0224-0801

### 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 the "Clandestine Drug Laboratory Cleanup Act," Section 6-2604, 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 15, 2008.

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 rules are being modified to clarify cleanup requirements and thereby ensure more consistency in clandestine drug lab cleanup and clearance processes. Specifically, several technical points are being clarified, including:

1. Removal of water from the list of acceptable wipe sample wetting agents;
2. Proper technique for wipe sampling; and
3. Whether painting over contaminated materials such as sheetrock is acceptable.

In addition, the reporting process for law enforcement is being amended to clearly state that law enforcement must notify both the property owner and the Department (as required in the statute). Improved reporting of contaminated properties by law enforcement will help make the online Clandestine Drug Laboratory Site Property List maintained by the Department more accurate, up-to-date, and comprehensive.

**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 Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted. However, a Notice of Intent to Promulgate a Rule was not published in the Administrative Bulletin. Monday, July 7, 2008, an informal meeting was held with the members of the *ad hoc* stakeholder workgroup originally formed to develop the chapter. This stakeholder group has broad representation including providers of services (cleanup contractors), realtor associations, District Health Departments, industrial hygienists, Department staff, federal agencies (i.e., USDA, EPA, Agriculture, Homeland Security), legal counsel, law enforcement, and legislators.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kara Stevens at (208) 332-7319.

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 22, 2008.

DATED this 1st day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0224-0801**

**010. DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (4-11-06)

**01. Certificate of Delisting.** A document issued by the Department certifying that a property has met the cleanup standard. (4-11-06)

**02. Certify.** To guarantee as meeting a standard. (4-11-06)

**03. Chain of Custody.** A procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the date and length of time of possession by each person. (4-11-06)

**04. Clandestine Drug Laboratory.** The area(s) where controlled substances or their immediate precursors, as those terms are defined in Section 37-2701, Idaho Code, have been, or were attempted to be, manufactured, processed, cooked, disposed of, or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing. (4-11-06)

**05. Clandestine Drug Laboratory Site Property List.** The list, maintained by the Department, of properties that have been identified as clandestine drug laboratories. (4-11-06)

**06. Cleanup Contractor.** One (1) or more individuals or commercial entities hired to conduct cleanup in accordance with the requirements of this rule. (4-11-06)

**07. Cleanup Standard.** The technology-based numerical value, established in Section 500 of these rules. (4-11-06)

**08. Clearance Sampling.** Testing conducted by a qualified industrial hygienist to verify that cleanup standards have been met. (4-11-06)

**09. Contamination or Contaminated.** The presence of chemical residues that exceed the cleanup standard established in Section 500 of these rules. (4-11-06)

**10. Delisted.** Removal of a property from the Clandestine Drug Laboratory Site Property List. (4-11-06)

**11. Demolish.** To completely tear down and dispose of a structure in compliance with local, state, and federal laws and regulations. (4-11-06)

**12. Department.** The Idaho Department of Health and Welfare. (4-11-06)

**13. Discrete Sample.** A single sample taken. (4-11-06)

14. **Documentation.** Preserving a record of an observation through writings, drawings, photographs, or other appropriate means. (4-11-06)
15. **Listed.** Addition of a property to the Clandestine Drug Laboratory Site Property List. (4-11-06)
16. **Methamphetamine.** Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. (4-11-06)
17. **Non-Porous.** Resistant to penetration or saturation of chemical substances ~~or materials~~. (4-11-06)(\_\_\_\_)
18. **Porous.** ~~Easily~~ Subject to penetration or permeated saturation by chemical substances ~~or materials~~. (4-11-06)(\_\_\_\_)
19. **Qualified Industrial Hygienist.** Must be one (1) of the following: (4-11-06)
- a. Certified Industrial Hygienist. An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. (4-11-06)
- b. Registered Professional Industrial Hygienist™. An individual who is a registered member of the Association of Professional Industrial Hygienists and possesses a baccalaureate degree, issued by an accredited college or university, in industrial hygiene, engineering, chemistry, physics, biology, medicine, or related physical and biological sciences who has a minimum of three (3) years full-time industrial hygiene experience. A completed master's degree in a related physical or biological science, or in a related engineering discipline, may be substituted for one (1) year of the experience requirement; and a similar doctoral degree may be substituted for an additional year of the experience requirement. (4-11-06)
20. **Sampling.** A surface sample collected by wiping ~~or blotting~~ a sample media on the surface being sampled. (4-11-06)(\_\_\_\_)
21. **Technology-Based Standard.** A cleanup level based on what is believed to be conservative and protective, while at the same time achievable by currently available technologies. (4-11-06)
22. **Vacant.** Being without an occupant for the purposes of habitation or occupancy. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. NOTIFICATION PROCESS.**

Once a property has been identified as a clandestine drug laboratory, the law enforcement agency having jurisdiction is responsible for initiating notification to the property owner and the Department within seventy-two (72) hours using the Department-approved form available to law enforcement. (4-11-06)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. CLEANUP PROCESS.**

01. **Cleanup Options for the Property Owner.** The property owner may choose to hire a cleanup contractor or conduct the cleanup himself in accordance with all applicable local, state, and federal laws and regulations. Cleanup must be conducted to reduce the concentration of methamphetamine to the standard specified in Section 500 of these rules. (4-11-06)(\_\_\_\_)

**02. Porous Materials Must Be Removed from the Property.** Porous materials must be removed from the property unless a qualified industrial hygienist certifies that the porous materials may remain on the property. An adequate coating or sealant can be applied to a porous surface as an acceptable cleanup method, if it meets the requirements under Subsection 500.02 of these rules. (4-11-06)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. CLEARANCE SAMPLING REQUIREMENTS.**

**01. Qualified Industrial Hygienist Required.** Sampling must be conducted by a qualified industrial hygienist to verify that cleanup standards have been met. (4-11-06)

**02. General Sampling Procedures.** Sample collection must be conducted according to the following minimum requirements: (4-11-06)

**a.** All sample locations must be photographed, and the photographs must be included in the final report required under Section 600 of these rules. (4-11-06)

**b.** All sample locations must be shown on a floor plan of the property, and the floor plan must be included in the final report required under Section 600 of these rules. (4-11-06)

**c.** All samples must be obtained, preserved, and handled in accordance with professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. (4-11-06)

**d.** Samples must be analyzed by a laboratory certified by the U.S. Environmental Protection Agency or accredited by the American Industrial Hygiene Association laboratory accreditation program for the analyte being analyzed. (4-11-06)(\_\_\_\_)

**e.** All sampling locations must be numerically identified and the numbered sampling locations must be delineated on the floor plan, visible in photographs, and linked to samples. (4-11-06)

**f.** ~~Whatman 40 ashless filter paper or equivalent~~ Standard three inch by three (3x3) inch gauze must be used for all sampling. The ~~filter paper gauze~~ must be wetted with analytical grade methanol, ~~ethanol or distilled/ deionized water or isopropanol.~~ The filter paper must be blotted or Each surface being sampled must be wiped at least five (5) times in two (2) perpendicular directions ~~within each sampling area~~ and the gauze turned onto itself throughout the wiping process. (4-11-06)(\_\_\_\_)

**g.** After sampling, the sample must be placed in a new, clean sample ~~jar~~ container and sealed with a Teflon-lined lid. The sample ~~jar~~ container must be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample ~~jar~~ container must be handled according to professional standards and conducted under the chain of custody protocol. (4-11-06)(\_\_\_\_)

**h.** Discrete sampling must be used in areas expected to have the highest levels of contamination, as identified on the Department approved form. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm<sup>2</sup>), or approximately sixteen (16) square inches) must be sampled from non-porous surfaces such as floors, walls, appliances, sinks, or countertops in each room. The sample area must be composed of no fewer than three (3) discrete samples. (4-11-06)

**i.** All other rooms of the property with lowest levels of contamination must be sampled using one (1) discrete sample per room. (4-11-06)

**j.** A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm<sup>2</sup>), or approximately sixteen (16) square inches) must be sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. (4-11-06)

401. -- 499. (RESERVED).

500. CLEANUP STANDARDS.

**01. Cleanup Standard for Methamphetamine.** A level of methamphetamine that does not exceed a concentration of point one (0.1) micrograms per one hundred (100) square centimeters (0.1 µg/100 cm<sup>2</sup>) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. (4-11-06)

**02. Cleanup Standard for a Porous Surface.** If a porous surface has a level of methamphetamine that does not exceed a concentration of point five (0.5) micrograms per one hundred (100) square centimeters (0.5 µg/100 cm<sup>2</sup>) as demonstrated by clearance sampling conducted by a qualified industrial hygienist, an adequate coating or sealant appropriate to the material can be used as a method to meet the cleanup standard under Subsection 500.01 of this rule. ( )

**023. Other Cleanup Standards.** Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on a case by case basis, based on an inventory of chemicals found, and after consultation with the Department, the property owner, law enforcement, and a qualified industrial hygienist. (4-11-06)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.26 - RULES GOVERNING THE IDAHO CHILDREN'S SPECIAL HEALTH PROGRAM

DOCKET NO. 16-0226-0801

### 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 56-1003 and 56-1019, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

THURSDAY, OCTOBER 2, 2008 7:00 pm	MONDAY, OCTOBER 6, 2008 7:00 pm	THURSDAY, OCTOBER 16, 2008 7:00 pm
Red Lion Hotel on the Falls 475 River Parkway Idaho Falls, ID	Red Lion Hotel Downtowner 1800 Fairview Avenue Boise, ID	Red Lion Templin's Hotel 414 E. First Avenue Post Falls, ID

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

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

The purposes of this rulemaking are to modernize the Phenylketonuria (PKU) aspect of the program to take advantage of lower-cost options for the PKU diet. Secondly, these changes are to revise the administrative procedures for billing and collection to make the amount billed to adult PKU patients more equitable, and to restructure the payment collections process to reduce costs to the program. Since the Rules are to be revised, the program has taken the opportunity to replace obsolete language in the Rule; these housekeeping changes will have no substantive effect on program activities or beneficiaries.

The substance of the Rules changes are: (1) to add the full range of medical foods to the program-funded PKU diet, (2) to reduce the fees charged to adult Idahoans with PKU, and (3) to switch the families' sliding fee scale co-pays from a post-service billing/collections model, to a pre-service payment business model.

This chapter of rule will also be updated to meet the current requirements of the Office of Administrative Rules (OAR) and the formatting and plain language standards required by the Department.

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

The proposed change switches the Adult PKU patient from a 100% self-pay obligation to a sliding fee scale self-pay obligation. It reduces the amount of program costs that the Department is entitled to collect from patients. However, requiring pre-payment of costs for which the patient is responsible will actually result in a net increase in cost-recovery to the Department. This change to a pre-pay system is expected to have a positive fiscal impact to the Department of approximately \$17,300 in the first year.

**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 will have a positive fiscal impact of greater than \$10,000 on the 100% federally-funded section of the Children's Special Health Program. Federal fund savings are anticipated to be ~\$32,400 in the first year, with possible increased savings in future years as the PKU patients become accustomed to using medical foods.

This rule change will have a positive fiscal impact of greater than \$10,000 on State General Funds. State general fund savings are anticipated to be ~\$34,300 in the first year, with possible increased savings in future years as the

adult PKU patients become accustomed to using medical foods.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, the Children's Special Health Program did not hold any formal or informal negotiated rulemaking sessions. The affected stakeholders are families and clients that order/use PKU formula; identifying those with the disease could inadvertently breach the confidentiality of their medical condition. Furthermore, the proposed changes to the Rules included the addition of a new benefit (metabolic foods for PKU patients) and a reduction in fees for Adult PKU patients. Changes reflecting current standard business practices were also made.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dieuwke Spencer at (208) 334-0670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0226-0801**

**16.02.26 - ~~RULES GOVERNING~~ THE IDAHO CHILDREN'S SPECIAL HEALTH PROGRAM**

**000. LEGAL AUTHORITY.**

Section 56-1003, Idaho Code directs the Department of Health and Welfare to establish rules as may be necessary to deal with problems related to personal health. The Children's Special Health Program (CSHP) provides medical and rehabilitative services to persons age birth to eighteen (18) years who meet the diagnostic eligibility criteria defined in Sections 101 through 108 of these rules. Section ~~39-147~~ 56-1019, Idaho Code mandates that the Children's Special Health Program also establish a program of services to persons age twenty-one (21) years and older who have cystic fibrosis. The Omnibus Budget Reconciliation Act (OBRA) of 1989 requires that thirty percent (30%) of the Maternal and Child Health Block Grant to each state be committed to programs for children with special health care needs.

(7-1-97)(\_\_\_\_)

**001. TITLE AND SCOPE.**

**01. Title.** These rules apply to the administration of the Idaho Children's Special Health Program and are to be cited as IDAPA 16.02.26, "~~Rules Governing~~ The Idaho Children's Special Health Program."

(7-1-97)(\_\_\_\_)

**02. Scope of Services.** The scope of activities provided by CSHP contractors and private providers such as diagnosis, case management, and treatment. The types of services for which reimbursement is made are related directly to program fiscal resources. Funds available for CSHP are limited in amount. Changes in the scope of

services and in rates of reimbursement may be made by administrative decision should budgetary reductions or cost overruns occur. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

~~All contested cases shall be~~ Administrative appeals are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-97)( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference in this chapter of rules. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Web Site.** The Department's internet web site is found at <http://www.healthandwelfare.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**007. -- 009. (RESERVED).**

**004010. DEFINITIONS.**

For the purposes of these rules, the following terms are used: (7-1-97)

**01. Applicant.** A person under age eighteen (18) or persons of any age with cystic fibrosis or Phenylketonuria (PKU) seeking services provided by CSHP. (7-1-97)( )

**02. Children's Special Health Program (CSHP).** The program section within the Idaho Department of Health and Welfare, Division of Health, which is responsible for the administration of services leading to the identification, diagnosis, and aftercare of children with special health care needs. (7-1-97)

**03. Client.** A person under age eighteen (18) with a chronic physically disabling condition which meets one of the diagnostic categories of CSHP or persons of any age with cystic fibrosis or PKU for which he is receiving or has applied to receive services from CSHP. (7-1-97)( )



- 04. Department.** The Idaho Department of Health and Welfare. (7-1-97)
- 05. Diagnosis.** The act of identifying a disease from its signs or symptoms. (7-1-97)
- 06. Division.** The Division of Health, a division of the Idaho Department of Health and Welfare, and where CSHP is housed administratively. (7-1-97)

**00511. -- 04950. (RESERVED).**

**050. SERVICES:**

*The scope of activities provided by CSHP contractors such as diagnosis, case management and treatment. The types of services for which reimbursement is made are related directly to program fiscal resources. Funds available for CSHP are limited in amount. Changes in the scope of services and in rates of reimbursement may be made by administrative decision should budgetary reductions or cost overruns occur.* (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**052. TREATMENT SERVICES.**

Following the diagnostic process, individuals may be closed to further service as having "no eligible condition found." Program-eligible clients are accepted for continuing service coordination under CSHP. Care is provided through clinics where treatment schedules are planned and periodic review of cases are conducted, and through private medical providers. An individual client's treatment plan may cover a variety of related services. (7-1-97)(\_\_\_\_)

**053. FOLLOW UP AND CASE MANAGEMENT.**

CSHP will contract with ~~public health nurses and other district health department program staff~~ care coordinators to follow-up on CSHP clients receiving treatment through the program to assure that a treatment plan is outlined. These staff ~~shall~~ will also implement timely scheduling of medical habilitative and rehabilitative services. (7-1-97)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. CYSTIC FIBROSIS.**

**01. Eligible Conditions.** In addition to cystic fibrosis, services are also provided under this program to clients ~~twenty-one~~ eighteen (≥18) years of age and under who have Kartagener's Syndrome or immotile cilia. (7-1-97)(\_\_\_\_)

**02. Services Provided.** Services available include Physician's office visits or clinic visits, laboratory, x-ray and other tests ordered by physician, medications and drugs prescribed in connection with treatment of cystic fibrosis, transportation to out-of-state medical centers based on physician referral, and home therapy equipment prescribed by the physician. Genetic counseling clinics are available throughout the state ~~or~~ or contractors, and cystic fibrosis patients and their families are encouraged to make use of this service. (7-1-97)(\_\_\_\_)

**03. Excluded Services.** Inpatient hospital care is not paid for under the CSHP Cystic Fibrosis Program, consistent with CSHP policy of not paying acute care. (7-1-97)

**04. Spending Limit.** Services provided to eligible patients under the CSHP Cystic Fibrosis Program are subject to a per patient, annual spending limit of eighteen thousand dollars (\$18,000) for each fiscal year, July 1 through June 30. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

**107. PHENYLKETONURIA (PKU).**

Under this program eligible patients are provided treatment services which include nutritional assessment, dietary counseling and provision of formula medical foods, including formula, in compliance with the patient's treatment plan. ~~Persons over eighteen (18) years of age with PKU may purchase formula from CSHP at CSHP's cost.~~  
(7-1-97)( )

**01. PKU Patients Under Eighteen Years of Age.** PKU patients under eighteen (18) years of age may purchase medical foods from CSHP or CSHP's contractor(s) by pre-paying the appropriate percentage, if any, of CSHP's cost. The percentage of cost is based on the sliding fee scale in Section 157 of these rules. ( )

**02. PKU Patients Eighteen Years of Age and Over.** PKU patients eighteen (18) years of age and over may purchase medical foods from CSHP or CSHP's contractor(s) by pre-paying the appropriate percentage, if any, of CSHP's cost. The percentage of cost is based on the sliding fee scale described in the sliding fee scale in Subsection 107.02 of this rule.

<b>TABLE 107.02 - SLIDING FEE SCALE FOR ADULT PKU SERVICES.</b>	
<b>Percent of Federal Poverty Level</b>	<b>Percentage of Cost Sharing Responsibility for Responsible Party</b>
0% - 185%	0%
186% -199%	10%
200% - 224%	20%
225% -249%	30%
250% -274%	50%
275% -299%	75%
300% and above	100%

( )

(BREAK IN CONTINUITY OF SECTIONS)

~~**109. SUPPLEMENTAL SECURITY INCOME (SSI).**~~

~~The state CSHP office receives copies of all SSI determinations made in the state and forwards them to the Idaho District Health Department nearest the family. District staff then contact the family to offer CSHP services if appropriate.~~  
(7-1-97)

~~1409. -- 148. (RESERVED).~~

**149. PROGRAM ELIGIBILITY.**

Eligibility for participation in CSHP is based on age, diagnosis, legal residence, insurance status, and financial criteria. Eligibility criteria is explained further in Sections 150 through 157 of these rules. (4-6-05)( )

(BREAK IN CONTINUITY OF SECTIONS)

151. AGE.

Applications may be accepted on persons up to age eighteen (18), or any age for persons with cystic fibrosis or ~~phenylketonuria (PKU)~~. With the exception of cystic fibrosis and PKU, CSHP will pay for no services after the patient's 18th birthday unless the person is receiving active inpatient treatment at the time of the birthday. In that case CSHP will pay for services until discharge if they fall within the guidelines described in Section 054 of these rules.

(7-1-97)(\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

153. RESIDENCE.

Applicants must ~~be legal residents of~~ reside in the state of Idaho to receive services from CSHP. ~~Legal residents of neighboring states are not eligible for services. Non-citizens who are legal residents of Idaho are eligible to receive services but undocumented aliens are not.~~

(7-1-97)(\_\_\_\_)

154. ~~FINANCIAL (RESERVED).~~

~~All persons who meet the age, diagnostic and residency requirements are eligible to receive CSHP services, regardless of income. Families whose taxable income falls at or below one hundred eighty five percent (185%) of the federal poverty level will be provided CSHP services at no cost. Those families with income above one hundred eighty five percent (185%) of the federal poverty level will share in the costs of treatment as determined by the CSHP sliding scale (see Section 157). Families with incomes great enough to have a financial participation percentage will be billed through CSHP for their share of costs. Payment arrangements can be made through the District Health Department CSHP Coordinator for those families facing significant costs.~~

(7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

157. SLIDING FEE SCALE.

~~A The sliding fee scale in Table 157 of this rule is used to determine the family's percentage of financial participation for a CSHP client's treatment, except for adult PKU. Families with incomes below one hundred eight five percent (185%) of federal poverty guidelines will receive CSHP services at no cost; incomes between one hundred eighty five percent (185%) and one hundred ninety nine percent (199%) will be responsible for ten percent (10%) of costs up to a one thousand eight hundred dollar (\$1,800) maximum; incomes between two hundred percent (200%) and two hundred twenty four percent (224%) will be responsible for twenty percent (20%) of costs up to a three thousand six hundred dollar (\$3,600) maximum; incomes between two hundred twenty five percent (225%) and two hundred forty nine percent (249%) will be responsible for thirty percent (30%) of costs up to a five thousand four hundred dollar (\$5,400) maximum; incomes between two hundred fifty percent (250%) and two hundred seventy four percent (274%) will be responsible for fifty percent (50%) of costs up to a nine thousand dollar (\$9,000) maximum; incomes between two hundred seventy five percent (275%) and two hundred ninety nine percent (299%) will be responsible for seventy five percent (75%) of costs up to a thirteen thousand five hundred dollar (\$13,500) maximum; and incomes of three hundred percent (300%) and above will be responsible for one hundred percent (100%) of costs up to an eighteen thousand dollar (\$18,000) maximum. The adult PKU sliding fee scale is in Section 107 of this rule. Each percentage category includes an annual per-client maximum for which a family would be responsible in any given year. The percentage amount applies to all costs incurred for services provided to ~~their child~~ the client up to the annual maximum indicated.~~

<b>TABLE 157 - SLIDING FEE SCALE FOR CSHP SERVICES (Excluding Adult PKU).</b>		
<b><u>Percent of Federal Poverty Level</u></b>	<b><u>Percentage of Cost Sharing Responsibility for Responsible Party</u></b>	<b><u>Annual Maximum Responsibility Per Client</u></b>
<u>0% - 185%</u>	<u>0%</u>	<u>\$0</u>
<u>186% -199%</u>	<u>10%</u>	<u>\$1,800</u>
<u>200% - 224%</u>	<u>20%</u>	<u>\$3,600</u>
<u>225% -249%</u>	<u>30%</u>	<u>\$5,400</u>
<u>250% -274%</u>	<u>50%</u>	<u>\$9,000</u>
<u>275% -299%</u>	<u>75%</u>	<u>\$13,500</u>
<u>300% and above</u>	<u>100%</u>	<u>\$18,000</u>

(7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. APPLICATIONS.**

An application for services from CSHP ~~shall~~ must, at a minimum, consist of a completed Application Form. A copy of the family's most recent tax return will also be required in order to determine financial eligibility. ~~Idaho Health Districts~~ CSHP may require additional forms such as a Request for Services, Consent for the Release of Information and/or an Authorization to Release Information. Applications are processed by ~~Idaho District Health Department~~ CSHP staff and contractors. Applicants are notified as to their acceptance or denial by ~~the Idaho District Health Department staff~~ a CSHP Care Coordinator. (7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. PRIOR AUTHORIZATION.**

To qualify for payment by CSHP, services other than diagnostic/consultative and follow-up/case management must be preauthorized by the CSHP ~~Health District~~ Care Coordinator or designee. A CSHP Authorization Memo, obtained from the District CSHP Care Coordinator, must be issued for any service authorized under CSHP. (7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**258. -- ~~299~~349. (RESERVED).**

**~~300. ADVISORY GROUP.~~**

~~The Medical Advisory Committee of CSHP provides recommendations to the Division of Health.~~ (7-1-97)

~~01. Recommendations. The Medical Advisory Committee provides recommendations regarding the following:~~ (7-1-97)

- ~~a. Future focus and responsibilities of CSHP; (7-1-97)~~
  - ~~b. Diagnostic conditions to be covered under the medical benefits aspects of the program; (7-1-97)~~
  - ~~c. Scope of services to be covered under each condition; (7-1-97)~~
  - ~~d. Definition of clinic categories; (7-1-97)~~
  - ~~e. Medical eligibility criteria for clinical attendance; (7-1-97)~~
  - ~~f. Clinical standards and staffing requirements for clinic operation; (7-1-97)~~
  - ~~g. Policies for medical personnel staffing clinics; (7-1-97)~~
  - ~~h. Criteria for medical provider appointment to CSHP clinics; (7-1-97)~~
  - ~~i. Provider application forms. (7-1-97)~~
- ~~02. **Appointment.** Members of the Medical Advisory Committee are appointed by the Administrator of the Division of Health. The Medical Advisory Committee may appoint subcommittees which can function as work groups and report to the Committee with recommendations. (7-1-97)~~

~~301.---349: (RESERVED);~~

**350. PROGRAM EXCLUSIONS.**

The following is a list of additional conditions, services and items not covered or paid for by CSHP: (7-1-97)

- 01. Excluded Conditions, Services and Items. (7-1-97)**
  - a. Acute care, such as hospitalization for congestive heart failure or complications of cystic fibrosis. (7-1-97)
  - b. Ambulance/air ambulance charges. (7-1-97)
  - c. Behavior problems. (7-1-97)
  - d. Brain tumors. (7-1-97)
  - e. Biofeedback equipment. (7-1-97)
  - f. Routine dental care. (7-1-97)
  - g. Congenital defects of the gastrointestinal or genitourinary tracts. (7-1-97)
  - h. Cancer care. (7-1-97)
  - i. Cosmetic surgery. (7-1-97)
  - j. Diabetes care. (7-1-97)
  - k. Prescription medicine -- except those prescribed for eligible cystic fibrosis patients. (7-1-97)
  - l. Educational services. (7-1-97)
  - m. Eye care except as related to an eligible condition such as cerebral palsy or juvenile rheumatoid arthritis. (7-1-97)

- n. Eyeglasses. (7-1-97)
- o. Fractures. (7-1-97)
- p. Growth Hormone. (7-1-97)
- q. Hearing problems, except as related to cleft lip and palate. (7-1-97)
- r. Hernias. (7-1-97)
- s. Home health/home nursing services. (7-1-97)
- t. Infectious diseases. (7-1-97)
- u. Legal services. (7-1-97)
- v. Minor foot and leg deformities: flat feet, bow legs, knock knees, pigeon toes, tibial torsion and mild femoral anteversion. (7-1-97)
- w. Neonatal intensive care in the newborn period. (7-1-97)
- x. Orthoptics - visual training therapy. (7-1-97)
- y. Routine pediatric care. (7-1-97)
- z. Prematurity. (7-1-97)
- aa. Pseudohermaphroditism. (7-1-97)
- bb. Psychological or psychiatric care or counseling. (7-1-97)
- cc. Respiratory or pulmonary problems except as related to cystic fibrosis. (7-1-97)
- dd. Respite care. (7-1-97)
- ee. Shoes (corrective or orthopedic). (7-1-97)
- ff. Sleep Apnea Monitors. (7-1-97)
- gg. Spinal disc lesions. (7-1-97)
- hh. Transplants. (7-1-97)
- ii. Transportation to in-town clinics or other regular services. (7-1-97)

**02. Individual Consideration.** Conditions not specifically identified within these rules as included or excluded by CSHP will be considered on a case by case basis that ~~includes review by the Medical Authorization Review Subcommittee of the CSHP Medical Advisory Committee~~ may include review by a medical advisor. (7-1-97)( )

**351. -- 9969. (RESERVED).**

**997. CONFIDENTIALITY OF RECORDS:**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (7-1-97)

**998. -- 999. (RESERVED).**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.01 - ELGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN**

**DOCKET NO. 16-0301-0802**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of this temporary rule is January 1, 2009.

**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 56-202, 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 October 15, 2008.

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

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

The U.S. Census is conducted every ten years and the census for 2010 will require the Census Bureau to recruit and hire employees to conduct this field work beginning in 2009. The State of Idaho has approval from the Centers for Medicare and Medicaid Services to exempt temporary income earned by individuals temporarily working for the Census Bureau on the 2010 Census. This rule change will allow low income individuals to earn additional income and gain job experience on a temporary basis without jeopardizing their Medicaid benefits.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit to low income individuals hired for temporary census work.

**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 state general funds for exempting this temporary income for current Medicaid eligible individuals.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking which confers a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 14th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-0802**

**353. TEMPORARY CENSUS INCOME.**

All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded.

(1-1-09)T

**3534. -- 369. (RESERVED).**



## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES**

**DOCKET NO. 16-0303-0802**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2008.

**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 7-1206, 32-1209, 32-1217, 56-203A, and 56-1004, Idaho Code; also 42 U.S.C. Section 666(a)(10) as amended by 4 Stat. 120 (February 8, 2006).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, October 15, 2008.

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

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

The Federal Deficit Reduction Act of 2005 contains a provision that requires each state's child support enforcement program to conduct reviews at least every 36 months on all child support enforcement cases in which recipients also receive Title IV-A (TANF\*) benefits. This rule change implements that requirement.

This 36-month review requirement better ensures that a child support recipient who receives TANF benefits has an accurate support order that reflects the current incomes of the custodial and non-custodial parents. It should be noted that this provision also applies to Title IV-A recipients in other states who have Idaho child support orders.

\*"Temporary Assistance to Needy Families" (TANF) - Idaho's TANF program is called "Temporary Assistance for Families in Idaho" (TAFI)

**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 because it is being promulgated to comply with deadlines in amendments to governing law found in Deficit Reduction Act of 2005.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being changed to bring them into compliance with the Deficit Reduction Act of 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kandee Yearsley (208) 334-0620.

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 22, 2008.

DATED this 1st day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-0802**

**000. LEGAL AUTHORITY.**

The Department of Health and Welfare, ~~Child Support Services~~, is authorized to promulgate these rules under Sections 7-1206, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code. ~~(3-30-01)~~(10-1-08)T

**001. TITLE, ~~AND~~ SCOPE, AND GOAL.**

**01. Title.** These title of these rules ~~are known and will be cited as Idaho Department of Health and Welfare Rules~~, is IDAPA 16.03.03, "Rules Governing Child Support Services," ~~IDAPA 16, Title 03, Chapter 03.~~  
(10-1-08)T

**02. Scope.** These rules provide the ~~standards~~ requirements for the administration of the Department's child support program. ~~(7-1-98)~~(10-1-08)T

**03. Goal.** The goal of child support services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employers, and the community. ~~(7-1-98)~~(10-1-08)T

**002. WRITTEN INTERPRETATIONS.**

~~The responsible program agency within the Department may from time to time issue written interpretations and guidelines as necessary to promote uniform application~~ There are no written interpretations of these rules. ~~(7-1-98)~~(10-1-08)T

**003. ADMINISTRATIVE APPEAL.**

~~Contested case~~ Administrative appeals ~~shall be~~ are governed by ~~Idaho Department of Health and Welfare Rules, provisions of IDAPA 16, Title 05, Chapter 03~~ 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(7-1-98)~~(10-1-08)T

**004. INCORPORATION BY REFERENCE.**

There are no incorporations by reference in this chapter of rules. (10-1-08)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-08)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-08)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-08)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-

5500. (10-1-08)T

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (10-1-08)T

**0046. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

*Any request for disclosure of information obtained by Child Support Services is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Use and Disclosure of Department Records."* (7-1-98)

**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." (10-1-08)T

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (10-1-08)T

**005. CHILD SUPPORT SERVICES.**

*The goal of Child Support Services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employer and the community.* (7-1-98)

**0067. -- 009. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. REVIEW AND MODIFICATION OF SUPPORT ORDERS.**

**01. Notice.** Each parent subject to a child support order in effect in the State that is being enforced by Child Support Services *shall must* be notified of the right of the parent to request a review of the order by Child Support Services every thirty-six (36) months. Reviews are not to be done more frequently unless there has been a substantial and material change in circumstances. (7-1-98)(10-1-08)T

**02. Review.** A support order *shall will* be reviewed for possible modification: *at the request of either parent subject to the order or a state child support services agency.* (7-1-98)(10-1-08)T

**a.** If requested by either parent; (10-1-08)T

**b.** If requested by any state, tribal, or foreign child support services agency; or (10-1-08)T

**c.** Automatically, at least every thirty-six (36) months, in any case where the custodial parent or other custodian of the child or children is receiving benefits under Title IV-A of the Social Security Act, either in Idaho or elsewhere. (10-1-08)T

**03. After the Review.** Each parent will be notified of the proposed adjustment or of the determination that there should be no change in the amount of child support. (7-1-98)

**04. Adjustment.** A modification of a support order will only be sought *upon a showing of substantial and material change in circumstances which* if the review conducted under Subsection 601.02 of this rule results in an obligation under the Child Support Guidelines which differs from the existing order by at least fifteen percent (15%), but not less than fifty dollars (\$50) per month. The following criteria *shall will* be applied by Child Support Services to determine whether there has been a substantial and material change of circumstances: (7-1-98)(10-1-08)T

**a.** Whether there has been an increase or decrease in the income, as the term is defined in the Child

Support Guidelines, of either parent or other person legally obligated for the support of a child; (7-1-98)

**b.** Whether there has been a substantial increase or decrease in the assets of either parent or other person legally obligated for the support of a child; (7-1-98)

**c.** Whether there has been a substantial change in the needs of the child; (7-1-98)

**d.** Whether there has been a change in the custody or visitation rights of the non-custodial parent; and (7-1-98)

**e.** Whether other factors exist indicating a substantial and material change in circumstances since the entry or modification of the support order. (7-1-98)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-0803**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2008.

**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, and the 2008 Federal Farm Bill, P.L. 110-234, Section 4102, 4103, 4107, 4113, 4114, and 4115; US H.R. 2419.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

These rule changes must be made in order for the Department to be in compliance with changes made in federal code with the 2008 Farm Bill. Additionally, changes in Idaho statute regarding "Able Bodied Adults Without Dependents" program will require the Department to amend these rules.

The federal 2008 Farm Bill requires five mandatory changes to the Idaho Food Stamp rules:

1. The cap on dependent care expense was removed so we are allowing full costs in the food stamp allotment calculation.
2. Rule changes will increase the amounts of allowed assets. These increases to the asset limit will be based on inflation.
3. Expand excluded retirement accounts and exclude two new education accounts from asset test.
4. The minimum food stamp benefit amount will be increased.
5. Delete rules referring to food stamp coupons as coupons are no longer issued.

Additional changes conferring a benefit are:

1. The Able Bodied Adults Without Dependents program will be rewritten to restart the three-year period.
2. Clarify when the Department must act upon unemployment insurance information.
3. Update the rule regarding the Individual Development account from assets test to comply with changes to Idaho Code.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Federal mandates require this rule change and it confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**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 due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking to meet federal mandates that confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0803**

**010. DEFINITIONS A THROUGH D.**

For the Food Stamp Program, the following definitions apply: (4-11-06)

**01. Adequate Notice.** Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

**02. Administrative Error Claim.** A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

**03. Aid to the Aged, Blind and Disabled (AABD).** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (4-11-06)

**04. Applicant.** A person applying for Food Stamps. (6-1-94)

**05. Application for Participation.** The application form filed by the head of the household or authorized representative. (6-1-94)

**06. Application for Recertification.** When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (4-11-06)

**07. Authorized Representative.** A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for

center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

**08. Battered Women and Children's Shelter.** A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

**09. Boarder.** Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

**10. Boarding House.** A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

**11. Categorical Eligibility.** If all household members receive or are authorized to receive monthly cash payment through TAFI, AABD or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (4-11-06)

**12. Certification Determination.** Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)

**13. Certification Period.** The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (4-11-06)

**14. Claim Determination.** The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

**15. Change Reporting Household (CR).** A household in which all members are elderly or disabled. (4-11-06)

**16. Client.** A person entitled to or receiving Food Stamps. (6-1-94)

~~**17. Coupon.** Any coupon, stamp, access device, or certificate issued under the Food Stamp Program for the purchase of food. (4-6-05)~~

~~**18. Coupon Allotment.** The total dollar amount of Food Stamps allowed the household during the full or prorated month. (6-1-94)~~

~~**197. Department.** The Idaho Department of Health and Welfare. (6-1-94)~~

~~**2018. Desk Review.** A desk review is a recertification that may or may not include talking to the participant. (4-11-06)~~

**219. Disqualified Household Members.** Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

**a.** Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

**b.** Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

**c.** Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

**d.** Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

- e.** Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)
- f.** Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)
- g.** Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)
- h.** Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)
- i.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

**220. Documentation.** The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

**231. Drug Addiction or Alcoholic Treatment Program.** Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

**011. DEFINITIONS E THROUGH L.**

For the Food Stamp Program, the following definitions apply: (4-11-06)

**01. EBT Handbook.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefit Transfer (EBT) of Public Assistance, Food Stamps, and Child Support." (7-1-98)

**02. Electronic Benefit Transfer.** A method of issuing Food Stamps to an eligible household. (7-1-98)

**03. Eligible Foods.** Any food or food product for human consumption excluding alcohol, tobacco, and hot foods and hot food products ready for immediate consumption. Eligible foods include: (6-1-94)

**a.** Garden seeds and plants to grow food for human consumption. (6-1-94)

**b.** Meals prepared for the elderly at a communal dining facility. (6-1-94)

**c.** Meals prepared and delivered by an authorized meal delivery service. (6-1-94)

**d.** Meals served to a narcotics addict or alcoholic who participate and reside in a rehabilitation center program. (6-1-94)

**e.** Meals prepared and served by an authorized group living center to blind or disabled residents who receive benefits under Titles I, II or X, XIV, XVI of the Social Security Act. (6-1-94)

**f.** Meals prepared and served at a shelter for battered women and children to eligible residents. (6-1-94)

**g.** Meals prepared and served by an authorized public or private nonprofit establishment to homeless Food Stamp participants. (6-1-94)

**04. Eligible Household.** A household living in a Idaho and meeting the eligibility criteria in these rules. (4-11-06)

**05. Emancipated Minor.** A person, age fourteen (14) but under age eighteen (18), who has been



married or whose circumstances show the parent and child relationship has been renounced such as a child in the military service. (6-1-94)

**06. Enumeration.** The requirement that each household member provide the Department either their Social Security Number (SSN) or proof that they have applied. (6-1-94)

**07. Exempt.** A household member who is not required to register for or participate in the JSAP program is exempt. A household member who is not required to register for work is exempt. (6-1-94)

**08. Farm Bill.** Public Law 107-171, "Farm Security and Rural Investment Act of 2002." (4-6-05)

**09. Fair Hearing.** A fair hearing in an appeal of a Department decision. See Section 003 of these rules for appeals. (4-11-06)

**10. Federal Fiscal Year.** The federal fiscal year (FFY) is from October 1 to September 30. (6-1-94)

**11. Field Office.** A Department of Health and Welfare service delivery site. (4-6-05)

**12. Food Assistance.** The Department's Food Stamp Program or Food Distribution Program. (6-1-94)

**13. Food and Nutrition Service (FNS).** The Food and Nutrition Service of the U.S. Department of Agriculture. This is the federal entity that administers the Food Stamp program. (4-11-06)

**14. Group Living Arrangement.** A public or private nonprofit residential setting serving no more than sixteen (16) residents. The residents are blind or disabled and receiving benefits under Title II or XVI of the Social Security Act, certified by the Department under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the Secretary of USDA to be comparable to Section 1616(e) of the Social Security Act. (6-1-94)

**15. Homeless Person.** A person: (6-1-94)

**a.** Who has no fixed or regular nighttime residence. (6-1-94)

**b.** Whose primary nighttime residence is a temporary accommodation for not more than ninety (90) days in the home of another individual or household. (7-1-98)

**c.** Whose primary nighttime residence is a temporary residence in a supervised public or private shelter providing temporary residence for homeless persons. (6-1-94)

**d.** Whose primary nighttime residence is a temporary residence in an institution which provides temporary residence for people who are being transferred to another institution. (6-1-94)

**e.** Whose primary nighttime residence is a temporary residence in a public or private place which is not designed or customarily used as sleeping quarters for people. (6-1-94)

**16. Homeless Meal Provider.** A public or private nonprofit establishment or a profit making restaurant which provides meals to homeless people. The establishment or restaurant must be approved by the Department and authorized as a retail food store by FCS. (7-1-98)

**17. Identification Card.** The card identifying the bearer as eligible to receive and use Food Stamps. (4-11-06)

**18. Inadvertent Household Error Claim (IHE).** A claim resulting from an overissuance, caused by the household's misunderstanding or unintended error. A household error claim pending an intentional program violation decision. (6-1-94)

**19. Income and Eligibility Verification System (IEVS).** A system of information acquisition and

exchange for income and eligibility verification which meets Section 1137 of the Social Security Act requirements. (6-1-94)

**20. Indian General Assistance.** The general assistance program administered by the Bureau of Indian Affairs. (6-1-94)

**21. Individual Development Account (IDA).** Matched funds savings accounts that can only be used to save for a certain asset goal. (10-1-08)T

**22. Institution of Higher Education.** Any institution which normally requires a high school diploma or equivalency certificate for enrollment. These institutions include colleges, universities, and business, vocational, technical, or trade schools at the post-high school level. (7-1-97)

**23. Institution of Post Secondary Education.** Educational institutions normally requiring a high school diploma or equivalency certificate for enrollment, or admits persons beyond the age of compulsory school attendance. The institution must be legally authorized by the state and provide a program of training to prepare students for gainful employment. (4-11-06)

**24. Legal Noncitizen.** A qualified alien under 8 USC Section 1641(b). (4-6-05)

**25. Limited Utility Allowance (LUA).** Utility deduction given to a food stamp household that has a cost for more than one (1) utility. This includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.**  
To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in ~~the a~~ fixed thirty-six (36) month period beginning December 1, 2005 and ending November 30, 2008. The initial thirty-six (36) month period began December 1, 1996. The thirty-six (36) month period restarts the first day of December every third year thereafter. (~~3-30-07~~)(10-1-08)T

**01. Work at Least Eighty Hours per Month.** The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (5-3-03)

**a.** Work in exchange for money. (3-15-02)

**b.** Work in exchange for goods or services, known as "in-kind" work. (3-15-02)

**c.** Unpaid work, with a public or private non-profit agency. (3-15-02)

**02. Participate in JSAP or Another Work Program.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for at least eighty (80) hours per month. (3-15-02)

**03. Combination of Work and Work Programs.** The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

**04. Participate in Work Opportunities.** The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

**05. Residents of High Unemployment Areas.** ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to his plan. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. RESOURCE LIMIT.**

The Food Stamp resource limit for households with one (1) member who is age sixty (60) or over, or disabled, is three thousand dollars (\$3,000). The resource limit is three thousand dollars (\$3,000), even if the person age sixty (60) or over is the only person in the household. The resource limit for other households is two thousand dollars (\$2,000). To be considered as disabled, a person must meet one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. Beginning October 1, 2008, the resource limit will be adjusted for inflation using the Consumer Price Index, rounded down to the nearest two hundred and fifty dollars (\$250). Each adjustment is based on the unrounded amount for the prior twelve (12) month period. (~~3-20-04~~)(10-1-08)T

**306. CHANGE IN RESOURCE LIMIT.**

The Food Stamp resource limit changes from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) the month a household member turns age sixty (60) or when the household member is disabled and meets one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. The resource limits will be adjusted for inflation using the Consumer Price Index beginning October 1, 2008. (~~3-20-04~~)(10-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**309. LIQUID RESOURCES.**

All liquid resources are counted, unless excluded. Liquid resources are listed below. Liquid resources can be easily converted to cash. (6-1-94)

- 01. Cash.** Cash on hand. (6-1-94)
- 02. Bank Accounts.** Checking, savings and credit union accounts. (6-1-94)
- 03. Lump Sum Payments.** Lump sum payments such as insurance, SSI, retirement, income tax refund. (6-1-94)
- 04. Trusts.** Unrestricted trust accounts and any available amounts from restricted trust accounts. (6-1-94)
- 05. Stocks.** Stocks, less fees for transfer and penalty for early sale. (6-1-94)
- 06. Bonds.** Savings bonds, treasury bonds, commercial bonds at current market value. (6-1-94)
- 07. Savings Certificates.** Saving certificates or certificates of deposit issued by banks, credit unions, or other financial concerns, less the penalty for early withdrawal. (6-1-94)
- ~~**08. Individual Retirement Accounts (IRA).** Individual Retirement Accounts (IRAs) for household members, less the penalty for early withdrawal. (6-1-94)~~
- ~~**09. Keogh Plan Funds.** Keogh plan funds for household members, less the penalty for early withdrawal. (6-1-94)~~

(BREAK IN CONTINUITY OF SECTIONS)

**357. PENSION PLANS OR FUNDS EXCLUDED AS A RESOURCE.**

The cash value of ~~pension plans or~~ any funds in a plan, contract, or account, described in Sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c) of the Internal Revenue Code of 1986 and the value of funds in a Federal thrift Savings Plan account as provided for in 5 U.S.C. 8439 are excluded as a resource. ~~IRAs and Keogh plans are not excluded, unless a binding contract exists with a person who is not a household member.~~ This exclusion includes any current or future tax preferred retirement accounts which are approved under federal or state law. ~~(6-1-94)~~(10-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

**364. EDUCATIONAL ACCOUNTS EXCLUDED AS A RESOURCE.**

The cash value of any funds in a qualified tuition program described in Section 529 of the Internal Revenue Code of 1986 or in a Coverdell education savings account under Section 530 of the Internal Revenue Code are excluded as a resource. (10-1-08)T

**365. INDIVIDUAL DEVELOPMENT ACCOUNT EXCLUDED AS A RESOURCE.**

The cash value of an Individual Development Account (IDA) is excluded as a resource. (10-1-08)T

**3646. -- 372. (RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

**411. VERIFIED IEVS DATA.**

The IEVS data listed below is considered verified upon receipt, unless it is questionable: (6-1-94)

**01. Benefit Data Exchange (BENDEX).** BENDEX Social Security retirement and disability income data. (6-1-94)

**02. State Data Exchange (SDX).** Benefit and eligibility data from SSA under Titles II and XVI of the Social Security Act accessed through the State Data Exchange (SDX). (6-1-94)

~~**03. Unemployment Insurance Benefits (UIB).** Unemployment Insurance Benefit (UIB) data maintained by the Department of Commerce and Labor or its counterpart agency. (7-1-98)~~

**043. TAFI.** Temporary Assistance for Families in Idaho. (7-1-98)

**054. AABD.** Aid to the Aged, Blind, or Disabled. (6-1-94)

**065. Medicaid.** The Federally-aided program for medical care (Title XIX, Social Security Act). (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

**533. HOUSEHOLD ELIGIBILITY AND BENEFIT LEVEL.**

A household's eligibility and benefit level is calculated in accordance with 7 CFR 273.10, except as indicated below

in Subsections 533.01 through 533.07. of this rule. The deductions in Subsections 533.01 through 533.07 of these rules are subtracted from non-excluded income. (4-11-06)

**01. Standard Deductions.** The standard deductions are controlled by Federal law. The monthly amounts are specified in Title 7 United States Code Section 2014. Current deductions may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. (4-6-05)

**02. Earned Income Deduction.** The earned income deduction is twenty percent (20%) of gross earned income. (6-1-94)

**03. Homeless Shelter Deduction.** The homeless shelter deduction is established by FNS and may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. (4-6-05)

**04. Excess Medical Deduction.** Excess medical expense is nonreimbursed medical expense of more than thirty-five dollars (\$35) per household per month. The household member must be either age sixty (60) or older or disabled to get this expense deduction. Special diets are not deductible. For allowable medical expenses, see Section 535 of these rules. (4-11-06)

**05. Dependent Care Deduction.** The dependent care expense deduction is for monthly dependent care expenses ~~up to a maximum of two hundred dollars (\$200) per dependent child under age two (2) and one hundred seventy-five dollars (\$175) for any other dependent. The care must be needed for a household member to accept, continue, or seek employment, or attend school or training for employment.~~ The dependent care may be needed for children or adults. ~~(4-11-06)~~(10-1-08)T

**06. Child Support Deduction.** The child support expense deduction is the legally obligated child support and arrearage the household pays, or expects to pay, to or for a non-household member. (4-11-06)

**07. Excess Shelter Deduction.** Excess shelter expense is the monthly shelter cost over fifty percent (50%) of the household's income after all other deductions. The excess shelter expense is not deducted if the household has received the homeless shelter deduction. For allowable shelter expenses, see Section 542 of these rules. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**536. DEPENDENT CARE EXPENSES.**

The care of a dependent must be necessary ~~for to maintain employment, conduct job search, employment, or attend school~~ or training. ~~The maximum deductible amount each month is two hundred dollars (\$200) per dependent child under age two (2) and one hundred seventy-five dollars (\$175) for any other dependent. If a child in the household reaches his second birthday during the certification period, adjust the dependent care expense deduction the month after the child turns age two (2).~~ The dependent care expenses must be deducted from income. The dependent care must meet the criteria listed below: ~~(4-6-05)~~(10-1-08)T

**01. Employment.** To accept employment or continue employment. (6-1-94)

**02. Job Search.** To look for work. Person does not need to be subject to job search requirements. (6-1-94)

**03. Training or Education.** To attend training or to pursue education. The training or education must be preparation for employment. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**564. BENEFITS AFTER THE INITIAL MONTH.**

After the initial month, benefits must be issued as described below. (6-1-94)

**01. One and Two Person Households.** All eligible one (1) and two (2) person households must receive a minimum allotment ~~of ten dollars (\$10)~~ equal to eight percent (8%) of the maximum one (1) person allotment. ~~(6-1-94)~~(10-1-08)T

**02. Three or More Person Household.** (6-1-94)

**a.** All eligible households with three (3) or more members entitled to one dollar (\$1), must receive two dollars (\$2). (6-1-94)

**b.** All eligible households with three (3) or more members entitled to three dollars (\$3), must receive four dollars (\$4). (6-1-94)

**c.** All eligible households with three (3) or more members entitled to five dollars (\$5), must receive six dollars (\$6). (6-1-94)

**03. Not Categorically Eligible.** All households, except categorically eligible households, must be denied if the household's net income exceeds the level at which benefits are issued. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**728. FOOD STAMP REDUCTION, SUSPENSION, OR CANCELLATION.**

Food Stamps for all Food Stamp households must be reduced, suspended, or cancelled, if ordered by the USDA Secretary to comply with Section 18 of the Food Stamp Act of 1977. Reduced Food Stamps are computed using the thrifty food plan amounts and are reduced by a percentage defined by FCS. Food Stamp reduction, suspension, and cancellation rules are described below: (7-1-98)

**01. Reducing Food Stamps.** FCS will notify the Department of the effective date of reduction and of the thrifty food plan reduction percentage. The Department must: (7-1-98)

**a.** Act immediately to carry out the reduction. (6-1-94)

**b.** Guarantee one (1) and two (2) person households a minimum benefit of ~~ten dollars (\$10)~~ equal to eight percent (8%) of the maximum one (1) person allotment unless the reduction is ninety percent (90%) or more of total projected monthly benefits. ~~(6-1-94)~~(10-1-08)T

**c.** Notify Field Offices of the effective date and reduction percentage. (6-1-94)

**02. Notice to Households.** Reductions, suspensions, or cancellations are mass changes. Individual notice is not required. (6-1-94)

**03. Restoring Lost Benefits.** Households whose Food Stamps are reduced or cancelled under this section are not entitled to restoration of benefits. Reductions or cancellations of Food Stamps may be ordered restored by the USDA Secretary. (6-1-94)

**04. Effects on Certification.** Field Offices must continue to accept and process expedited service applications, regular applications, and recertifications to determine eligibility, and to assign certification periods during a reduction, suspension, or cancellation. (6-1-94)

**05. Food Stamps for Eligible Households.** If a reduction is in effect, compute Food Stamps by reducing the thrifty food plan amount for the eligible household's size by the percentage ordered by FCS. Then deduct thirty percent (30%) of the household's net Food Stamp income from the thrifty food plan amount. (7-1-98)

**06. Suspension or Cancellation.** If a suspension or cancellation is in effect, no Food Stamps are to be issued to the applicant. (6-1-94)

**07. Expedited Services.** If expedited services are allowed in reduction, suspension, or cancellation months: (6-1-94)

**a.** Process applications during reduction months and apply the reductions as instructed. (6-1-94)

**b.** Process applications during suspension months and suspend Food Stamps until the suspension ends. (6-1-94)

**c.** Process applications during cancellation months. The deadline for processing is two (2) days or the end of the application month, whichever is later. Suspend Food Stamps until the cancellation ends. (6-1-94)

**08. Hearings.** Any household whose allotment was reduced, suspended, or cancelled under this section can request a fair hearing. (6-1-94)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.05 - ELGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0802**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of this temporary rule is January 1, 2009.

**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 56-202, 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 October 15, 2008.

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

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

The U.S. Census is conducted every ten years and the census for 2010 will require the Census Bureau to recruit and hire employees to conduct this field work beginning in 2009. The State of Idaho has approval from the Centers for Medicare and Medicaid Services to exempt temporary income earned by individuals temporarily working for the Census Bureau on the 2010 Census. This rule change will allow low income individuals who are eligible for assistance through AABD to earn additional income and gain job experience on a temporary basis without jeopardizing their Medicaid benefits.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit to low income individuals hired for temporary census work.

**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 state general funds for exempting this temporary income for current Medicaid eligible individuals.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking that is conferring a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 14th day of August, 2008.



Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0802**

**359. TEMPORARY CENSUS INCOME.**

All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded.

(1-1-09)T

~~359~~60. -- 399. (RESERVED).

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.08 - TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO**

**DOCKET NO. 16-0308-0803**

**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 October 15, 2008.

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 better serve the families or individuals in Idaho who are in need of cash assistance, the Department is amending these rules to:

1. Provide definitions of a caretaker relative and family unit;
2. Limit the number of TAFI cash assistance to one grant per family per month.
3. Clarify eligibility requirements for optional and mandatory individuals and the Social Security Number (SSN) requirement;
4. Modify the immunization requirement; and
5. Amend resource and income exclusions;

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

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

The fiscal impact due to this rulemaking is anticipated to be \$2502 of state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 26th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036

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**THE FOLLOWING IS THE TEXT FOR DOCKET 16-0308-0803**

**010. DEFINITIONS.**

- 01. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 02. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- 03. Caretaker Relative.** An adult specified relative other than parents who have an eligible related child residing with them and who are responsible for the child's care. ( )
- 034. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 045. Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)
- 056. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 067. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- 08. Family Unit.** A unit of eligible individuals that includes parents or may include caretaker relatives, who have an eligible related child residing with them. ( )
- 079. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 0810. Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
- 0911. Parent.** The mother or father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (7-1-98)
- 102. Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
- 143. Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
- 124. Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
- 135. Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
- 146. Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

113. CONCURRENT MULTIPLE BENEFIT PROHIBITION.

**01. Multiple TAFI Benefits.** If individuals in a family unit are potentially eligible for TAFI benefits, only one (1) TAFI cash benefit is allowed in the same month for the family unit. ( )

**02. Multiple Program Benefits.** If an individual is potentially eligible for either TAFI or AABD, only one (1) program may be chosen. If a child is potentially eligible for either TAFI or foster care, only one (1) program may be chosen. No individual may be eligible for benefits as a member of more than one (1) family in the same month. (3-30-01)( )

(BREAK IN CONTINUITY OF SECTIONS)

125. ~~MANDATORY INDIVIDUALS~~ BUDGETING FOR PARENTAL CARETAKERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.03 of this rule. (3-15-02)( )

**01. Children.** Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent ~~or a caretaker relative~~ who exercises care and control of them. A dependent child's natural or adoptive brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. (4-5-00)( )

**02. Parents.** Parents who have an eligible natural or adopted child residing with them. (7-1-98)

**03. Pregnant Woman.** A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)

126. ~~OPTIONAL INDIVIDUALS~~ BUDGETING FOR CARETAKER RELATIVES.

Individuals who may be eligible are listed in Subsections 126.01 and 126.02 of this rule. (3-15-02)( )

**01. Caretaker Relatives.** ~~Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt, uncle, nephew, niece, first cousin, or first cousin once removed; one (1) of these relationships prefixed by "grand" or "great"; one (1) of these relationships by half-blood; a stepparent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended.~~ (7-1-98)( )

**02. Related Multiple Children.** ~~Related dependent children who are not siblings or half (1/2) siblings of family members and who are living in the home. When multiple children are included in the family unit and any child receives Social Security Income, that income is not counted in the determination of the grant amount.~~ (4-5-00)( )

(BREAK IN CONTINUITY OF SECTIONS)

133. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

An 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. When an SSN is unverified, the applicant is not eligible for TAFI benefits ~~and makes the family ineligible for TAFI~~. The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement. ~~(3-20-04)~~(\_\_\_\_)

**01. Application for SSN.** The applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

**02. Failure to Apply for SSN.** The applicant may be granted good cause for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**141. IMMUNIZATION RESPONSIBILITY.**

Eligible children must obtain immunizations ~~according to the Department's schedule for immunizations~~, unless there is a religious or other objection, or immunization would endanger the life or health of a child. ~~(7-1-98)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**208. RESOURCE EXCLUSIONS.**

The resources listed in Subsections 208.01 through 208.104 of this rule, are excluded. ~~(7-1-98)~~(\_\_\_\_)

**01. Home and Lot.** The family's home, surrounding land and buildings not separated by property owned by others. A public road or right of way that separates any plot from the home does not affect the exclusion. (7-1-98)

**02. Household Goods.** Household goods are items of personal property normally found in the home. The items must be used for maintenance, use, and occupancy of the home. Household goods include furniture, appliances, television sets, carpets, and utensils for cooking and eating. (3-30-01)

**03. Personal Effects.** Personal effects are items worn or carried by a participant, or items having an intimate relation to the participant. Personal effects include clothing, jewelry, personal care items, and prosthetic devices. Personal effects also include items for education or recreation, such as books, musical instruments, or hobby materials. (3-30-01)

**04. Building Lot.** One (1) unoccupied lot and one (1) partially built home. Only one (1) home and one (1) lot can be excluded. (7-1-98)

**05. Unoccupied Home.** A home temporarily unoccupied due to employment, training, medical care or treatment and natural disasters. (7-1-98)

**06. Home Loss or Damage Insurance Settlements.** An insurance settlement awarded to a family for home loss or damage, for twelve (12) months from the date of receipt. (7-1-98)

**07. Income Producing Property.** Real property that annually produces income consistent with its fair

market value. (7-1-98)

**08. Equipment Used in a Trade or Business.** Equipment used in a trade or business or reasonably expected to be used within one (1) year from their most recent use. (7-1-98)

**09. Contracts.** A mortgage, deed of trust, promissory note, or any other form of sales contract if the purchase price and income produced are consistent with the property's fair market value. (7-1-98)

**10. Life Insurance.** The cash surrender value of a life insurance policy. (7-1-98)

**11. Native American Payments.** To the extent authorized, payments or purchases made with payments authorized by law based on Native American ancestry. (7-1-98)

**12. Funeral Agreements.** The cash value of an irrevocable funeral agreement. (7-1-98)

**13. Education Accounts.** Account with funds legally identified as monies to pay for educational expenses. ( )

**14. Retirement and Tax Preferred Accounts.** Accounts legally identified as monies for retirement. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. EXCLUDED INCOME.**

The types of income listed in Subsections 215.01 through 215.367 of this rule, are excluded. (~~3-30-01~~)( )

**01. Supportive Services.** Supportive services payments. (7-1-98)

**02. Work Reimbursements.** Work-related reimbursements. (7-1-98)

**03. Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)

**04. Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)

**05. Loans.** Loans with a signed, written repayment agreement. (7-1-98)

**06. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)

**07. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)

**08. TAFI.** Retroactive TAFI grant corrections. (7-1-98)

**09. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)

**10. Interest Income.** Interest posted to a bank account. (7-1-98)

**11. Tax Refunds.** State and federal income tax refunds. (7-1-98)

**12. EITC Payments.** EITC payments. (7-1-98)

13. **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
14. **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
15. **Foster Care.** Foster care payments. (7-1-98)
16. **Adoption Assistance.** Adoption assistance payments. (7-1-98)
17. **Food Programs.** Commodities and food stamps. (7-1-98)
18. **Child Nutrition.** Child nutrition benefits. (7-1-98)
19. **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. 20. **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. 21. **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
22. **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
23. **Housing Subsidies.** ~~Housing subsidies.~~ An agency or housing authority pays a portion of or all of the housing costs for a participant. (7-1-98)(\_\_\_\_)
24. **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
25. **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
26. **Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
27. **Work Study Income of Student.** College work study income. (7-1-98)
28. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
29. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
30. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
31. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
32. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
33. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)

35. **Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)

36. **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)

37. **Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**239. CARETAKER RELATIVE APPLYING ONLY FOR RELATIVE CHILD.**

When a caretaker relative applies only for a relative child, only the child's income ~~and resources are~~ is counted. (7-1-98)( )



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-0801**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of this temporary rule is July 1, 2008.

**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 56-202(b), 56-203, 56-209I, 56-250 through 257, and 56-1003, Idaho Code.

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

**TUESDAY - OCTOBER 14, 2008 - 3:30 pm**

**DEPARTMENT OF HEALTH & WELFARE  
Medicaid Office - Conference Room D-West  
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 the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Office of Drug Policy has determined substance abuse is a major problem in Idaho, and the 2008 Legislature appropriated funds to provide services through the medical assistance program for treatment of substance abuse. These rules provide the criteria for eligibility, types of treatment services to be covered, and any limitations for substance abuse services that will be provided to an eligible Medicaid participant with a substance abuse problem under the Medicaid Basic Plan.

**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 because of changes to state law and it confers a benefit to individuals who have a substance abuse problem.

**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 state's matching funds fiscal impact for Substance Abuse Treatment and Prevention is \$963,600, as appropriated by the 2008 Legislation.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes were required by state law and confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Pat Guidry at (208) 364-1813.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
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P.O. Box 83720, Boise, ID 83720-0036  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0801**

**009. ~~MANDATORY~~ CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Criminal history checks are required for certain types of providers under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (3-30-07)

**02. Availability to Work or Provide Service.** (3-30-07)

**a.** The employer, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (3-30-07)

**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (3-30-07)

**03. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-30-07)

**04. Providers Subject to Criminal History Check Requirements.** The following providers must receive a criminal history clearance: (3-30-07)

**a.** Mental Health Clinics. The criminal history check requirements applicable to mental health clinic staff are found in Subsection 714.05 of these rules. (3-30-07)

**b.** Commercial Non-Emergency Transportation Providers. The criminal history check requirements applicable to commercial non-emergency transportation providers are found in Section 874 of these rules. (3-30-07)

**c.** Substance Abuse Treatment Providers. The criminal history check requirements applicable to substance abuse treatment providers are found in Section 694 of these rules. (7-1-08)T

**(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, subject to the coverage limitations contained in these 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. (9-1-07)T

**01. Hospital Services.** The range of hospital services covered is described in Sections 400 through 447~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

- 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~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

**03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 516~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

- 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~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

- 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~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

**06. Prevention Services.** The range of prevention services covered is described in Sections 570 through 646~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T

- 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 Preventive Health Account services Assistance benefits* are described in Sections 620 through 626. (~~3-30-07~~)(7-1-08)T
- 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~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 666~~79~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 09. Family Planning.** Family planning services are described in Sections 680 through 686~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 10. Substance Abuse Treatment Services.** Services for substance abuse treatment are described in Sections 690 through 699 of these rules. (7-1-08)T
- 101. Mental Health Services.** The range of covered Mental Health services are described in Sections 700 through 716~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 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)
- 112. Home Health Services.** Home health services are described in Sections 720 through 726~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 123. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 736~~9~~ of these rules. (~~4-2-08~~)(7-1-08)T
- 134. Audiology Services.** Audiology services are described in Sections 740 through 746~~9~~ of these rules. (~~4-2-08~~)(7-1-08)T
- 145. Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 776~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 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)
- 156. Vision Services.** Vision services are described in Sections 780 through 786~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 167. Dental Services.** The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 of these rules. (9-1-07)T
- 178. Essential Providers.** The range of covered essential services is described in Sections 820 through 856~~9~~ of these rules. (~~3-30-07~~)(7-1-08)T
- 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)
- 189. Transportation.** The range of covered transportation services is described in Sections 860 through

876~~9~~ of these rules.

~~(3-30-07)~~(7-1-08)T

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)

~~1920.~~ **EPSDT Services.** EPSDT services are described in Sections 880 through 886~~9~~ of these rules.

~~(3-30-07)~~(7-1-08)T

~~201.~~ **Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 896~~9~~ of these rules.

~~(3-30-07)~~(7-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUB AREA: SUBSTANCE ABUSE TREATMENT SERVICES  
(Sections 690 Through 699)**

**690. SUBSTANCE ABUSE TREATMENT SERVICES - DEFINITIONS.**

The following definitions apply to Sections 690 through 696 of these rules.

(7-1-08)T

**01. Assessment.** Assessment includes annual assessment, interviewing, and treatment plan building.

(7-1-08)T

**02. Case Management.** Case management consists of the following:

(7-1-08)T

a. Finding, arranging, and assisting the participant to gain access to and maintain appropriate services, supports, and community resources.

(7-1-08)T

b. Monitoring participant's progress to verify that services are received and are satisfactory to the participant, ascertaining that services meet the participant's needs, documenting progress and any revisions in services needed, and making alternative arrangements if services become unavailable to the participant.

(7-1-08)T

c. Planning services with the participant that include both community reintegration planning and exit planning.

(7-1-08)T

**03. Drug Testing.** A urinalysis test used to detect the presence of alcohol or drugs.

(7-1-08)T

**04. Family Therapy.** Service provided jointly to a participant and the participant's family. The desired outcome is the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both. Family therapy sessions are for the exclusive benefit of the participant.

(7-1-08)T

**05. Group Counseling.** Service provided to participants in a peer group setting. The desired outcome is the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both.

(7-1-08)T

**06. Individual Counseling.** Service provided to a participant in a one-on-one setting with one (1) participant and one (1) counselor. The desired outcome is the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both.

(7-1-08)T

**07. Qualified Substance Abuse Treatment Professional.** A person who has one thousand forty (1,040) hours of supervised experience providing substance abuse treatment and meets one (1) of the criteria listed in Subsection 690.07.a. through 690.07.g. of this rule.

(7-1-08)T

a. Alcohol and drug counselor certified by the Idaho Board of Alcohol/Drug Counselor's

- Certification, Inc. (CADC or Advanced CADC): (7-1-08)T
- b.** Licensed professional counselor or licensed clinical professional counselor: (7-1-08)T
  - c.** Licensed physician: (7-1-08)T
  - d.** Licensed psychologist: (7-1-08)T
  - e.** Mid-level practitioner including licensed physician assistant, nurse practitioner or clinical nurse specialist: (7-1-08)T
  - f.** Licensed clinical social worker or licensed master social worker: (7-1-08)T
  - g.** Licensed marriage and family therapist; or (7-1-08)T
  - h.** Qualified substance abuse treatment professional. (7-1-08)T
  - 08.** Unit. An increment of fifteen (15) minutes of time. (7-1-08)T

**691. SUBSTANCE ABUSE TREATMENT SERVICES - PARTICIPANT ELIGIBILITY.**

Each participant must meet the intake eligibility screening criteria described in IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services." (7-1-08)T

**692. SUBSTANCE ABUSE TREATMENT SERVICES - COVERAGE AND LIMITATIONS.**

**01. Included Services.** The services listed in Subsections 692.01.a. through 692.01.f. of this rule are covered including any limitation on the service for substance abuse treatment. (7-1-08)T

**a.** Assessment services are limited to thirty-two (32) units annually. Each assessment is valid for six (6) months and must meet the requirements in IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services." (7-1-08)T

**b.** Case management services are limited to two hundred and twenty (220) units annually and must not exceed sixteen (16) units per week. Case management services for substance abuse treatment are not covered when the participant is enrolled in any service coordination services described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." Case management is only provided on an outpatient basis to participants who are at risk of being institutionalized. (7-1-08)T

**c.** Drug testing is limited to three (3) tests per week. (7-1-08)T

**d.** Family therapy services are limited to eight (8) units per week. (7-1-08)T

**e.** Group counseling services are limited to forty-eight (48) units per week. (7-1-08)T

**f.** Individual counseling services are limited to forty-eight (48) units per week. (7-1-08)T

**02. Excluded Services.** Services specifically excluded are described in IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services," residential services, and life skills training services. (7-1-08)T

**693. SUBSTANCE ABUSE TREATMENT SERVICES - PROCEDURAL REQUIREMENTS.**

**01. Assessment.** Each participant must receive a biopsychosocial assessment of the participant's alcohol or substance abuse treatment needs. This assessment must meet the requirements in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs," and IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services," and utilize a Department approved standardized assessment tool. (7-1-08)T

**02. Treatment Plan.** The assessment must be used to develop an individualized treatment plan for

each participant. The development and content of the treatment plan must meet the requirements in IDAPA 16.06.03 "Alcohol/Drug Abuse Prevention and Treatment Programs," and IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services." (7-1-08)T

**03. Treatment Services.** Substance abuse treatment services necessary to meet participant needs must be identified in the individualized treatment plan. The treatment services must meet the requirements in IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services." (7-1-08)T

**04. Records.** Each treatment provider must maintain a written record for each participant. The record must meet the standards required for client records in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs." (7-1-08)T

**05. Prior Authorization.** Substance abuse treatment services must be prior authorized by the Department or its designee as required in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs." (7-1-08)T

**06. Healthy Connections Referral.** A referral from the participant's Healthy Connections provider is required for substance abuse treatment services when the participant is enrolled in Healthy Connections. (7-1-08)T

**694. SUBSTANCE ABUSE TREATMENT SERVICES - PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Provider Network.** Each provider of substance abuse treatment services must maintain a network of approved programs and treatment facilities that meet the requirements in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs." (7-1-08)T

**02. Certificate of Approval for Programs and Facilities.** Each program and facility providing substance abuse treatment services must meet the applicable approval and certification requirements described in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs." An agency must have a certificate of approval issued by the Department prior to staff providing substance abuse treatment services. (7-1-08)T

**03. Criminal History Check.** Agency staff providing services to participants must have a criminal history check as provided in Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-08)T

**04. Assessment.** Assessment must be conducted by a qualified substance abuse treatment professional who is certified to administer the standardized assessment tool being used. (7-1-08)T

**05. Therapy and Counseling Services.** Therapy and counseling services must be provided by a qualified substance abuse treatment professional. (7-1-08)T

**06. Case Management.** Case management services must be provided by a qualified substance abuse treatment professional. (7-1-08)T

**695. SUBSTANCE ABUSE TREATMENT SERVICES - PROVIDER REIMBURSEMENT.** Each covered substance abuse treatment service, except drug testing, is reimbursed by units. Each unit is equal to fifteen (15) minutes of service provided. (7-1-08)T

**696. SUBSTANCE ABUSE TREATMENT SERVICES - QUALITY ASSURANCE.**

**01. Quality Assurance.** Alcohol and drug programs are subject to the quality assurance provisions described in IDAPA 16.06.03, "Alcohol/Drug Abuse Prevention and Treatment Programs." (7-1-08)T

**02. Department Performance Measurements.** The Department will establish performance measurements to evaluate the effectiveness of substance abuse treatment services. The measurements will be reviewed at least annually and adjusted as necessary to provide effective outcomes and quality services. (7-1-08)T

**68697. -- 699. (RESERVED).**

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0802

### 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.

**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 15, 2008.

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 is making changes in the rules regarding the credentialing of providers of mental health clinic services. These changes clarify credentialing terminology as well as the credentialing criteria for new and existing providers. These proposed changes will make the credentialing process easier to understand for providers, Medicaid staff, and the Credentialing Contractor.

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

**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 67-5220, Idaho Code, informal negotiated rulemaking was conducted. An informal meeting to negotiate the content of the rule was held with stakeholders on Monday, July 28, 2008. Due to time constraints, a Notice of Intent to Promulgate a rule was not published in the Administrative Bulletin. However, an online notice was placed on the external Health and Welfare website. Also, a link to this notice was placed on the July calendar page of the state's Administrative Rules Coordinator.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy May at (208) 334-5747.

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 22, 2008.

DATED this 5th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone  
(208) 334-6558 fax  
dhwrules@dhw.idaho.gov



THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0802

**712. MENTAL HEALTH CLINIC SERVICES - CREDENTIALING RESPONSIBILITIES OF THE DEPARTMENT.**

*The Department is phasing in the Credentialing Program in 2006. During the first three (3) years of development the following will take place:* (3-30-07)

**01. Reimbursement.** A mental health clinic must be designated as credentialed or provisionally credentialed in order to receive Medicaid reimbursement for services. Any agency that fails to achieve or maintain credentialed status will have its Medicaid provider agreement terminated. (3-30-07)( )

**02. Application.** All existing providers and new provider applicants must submit an application for credentialing that will be reviewed in order to proceed with the credentialing process and obtain the required credential by the Department. All initial applications will be responded to within thirty (30) calendar days. If the application is incomplete or is not in substantial compliance with these rules, the applicant must submit the additional information within ten (10) business days of receipt of notice for the application to be considered further. The application will be reviewed up to three (3) times. If the applicant has not provided the required information by the third submittal, then the application will be denied and the application will not be considered again for twelve (12) months. (3-30-07)( )

**03. Temporary Credentialed Status.** In order for existing providers to be able to continue to provide services during ~~these first three (3) years~~ initial development, the Department will grant a one-time temporary credential to all existing providers. (3-30-07)( )

**04. New Providers.** ~~Once the Credentialing Program is initiated n~~ New provider applicants will be required to submit a ~~credentialing~~ application and successfully complete the credentialing application process as a condition for Department approval as a Medicaid provider. If the new provider applicant successfully passes the application portion of credentialing, then a temporary credential will be issued to the provider for up to one hundred eighty (180) days. Within the one hundred eighty (180) days, an on-site review will be conducted. If the provider applicant is deemed to be in substantial compliance with these rules, then the temporary credential will be converted to a full credential. If the provider fails to be in substantial compliance, then the temporary credential will expire, credentialed status will be denied, and the provider applicant will not be considered for credentialing again for twelve (12) months. (3-30-07)( )

**05. Elements of Credentialing.** The initial credentialing process consists of the application, self-study, and an on-site review for compliance with the requirements of these rules. (3-30-07)( )

**a.** The application provides documentation the agency has met the criteria set forth in these rules. Elements contained in the application include: ( )

i. Ownership and governance; ( )

ii. Physician contract for medical and clinical oversight and supervision; ( )

iii. Proof of appropriate insurance; ( )

iv. Appropriate employment and contract documentation; and ( )

v. Copies of relevant licenses and transcripts. ( )

**b.** The self-study provides the agency the opportunity to formally document policies and procedures that demonstrate compliance with Sections 713 and 714 of these rules. ( )

**c.** The on-site review provides the Department the opportunity to observe service delivery and ensure

the agency actually implements and complies with their policies and procedures. ( )

**06. Deemed Status.** Providers accredited by private accreditation agencies, ~~such as~~ (i.e., the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or Commission on the Accreditation of Rehabilitation Facilities (CARF)), will be exempt from credentialing processes ~~that the Department deems redundant~~. Other accrediting agencies may be determined acceptable upon review by the Department. Providers must submit to the Department appropriate documentation of their private accreditation status. (3-30-07)( )

**07. Expiration and Renewal of Credentialed Status.** Credentials issued under these rules will be issued for a period up to three (3) years. Unless ~~suspended~~ denied or revoked, the agency's credential will expire on the date designated by the Department. No later than ninety (90) days before expiration, an agency must apply for renewal of credentials. A site review may be conducted by the Department for renewal applications. (3-30-07)( )

**08. Provisional Credentialed Status.** If a new or renewal applicant is found deficient in one (1) or more of the requirements for credentialing, but does not have deficiencies that jeopardize the health and safety of the participants or substantially affect the provider's ability to provide services, a provisional credential may be issued. Provisional credentials will be issued for a period not to exceed one hundred eighty (180) days. During that time, the Department will determine whether the deficiencies have been corrected. If so, then the agency will be credentialed. If not, then the credential will be denied or revoked. (3-30-07)

**09. Denial or Revocation of Credentialed Status.** The Department may deny or revoke credentials when conditions exist that endanger the health, safety, or welfare of any participant or when the agency is not in substantial compliance with these rules. Additional causes for denial or revocation of credentials include the following: (3-30-07)( )

**a.** The provider agency or provider agency applicant has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining credentialed status; (3-30-07)

**b.** The provider agency or provider agency applicant has been convicted of ~~or is currently under investigation for~~ fraud, gross negligence, abuse, assault, battery or exploitation; (3-30-07)( )

**c.** The provider agency or provider agency applicant has been convicted of a criminal offense within the past five (5) years other than a minor traffic violation or similar minor offense; (3-30-07)

**d.** The provider agency or provider agency applicant has been denied or has had revoked any health facility license or certificate; (3-30-07)

**e.** A court has ordered that any provider agency owner or provider agency applicant must not operate a health facility, residential care or assisted living facility, or certified family home; (3-30-07)

**f.** Any owners, employees, or contractors of the provider agency or provider agency applicant are listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; (3-30-07)

**g.** The provider agency or provider agency applicant is directly under the control or influence, whether financial or other, of any person who is described in Subsections 712.09.a. through 712.09.f. of this rule. (3-30-07)

**10. Procedure for Appeal of Denial or Revocation of Credentials.** Immediately upon denial or revocation of credentials, the Department will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0803

### 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.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>FRIDAY OCTOBER 10, 2008 1:00 pm MDT</b>	<b>WEDNESDAY OCTOBER 15, 2008 1:00 pm PDT</b>	<b>FRIDAY OCTOBER 17, 2008 9:00 am MDT</b>
<b>H &amp; W Region VI Office Room 210 421 Memorial Dr. Pocatello, ID</b>	<b>H &amp; W Region I Office Large Conference Room 1120 Ironwood Drive Coeur d'Alene, ID</b>	<b>Medicaid Central Office Conference Room D&amp;E 3232 Elder Street Boise, ID</b>

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 the 2008 legislature, a rule change was approved in this chapter that allows Medicaid to enroll occupational therapists and speech-language pathologists as independent Medicaid providers. Current rules allow physical therapists, occupational therapists, and speech-language pathologists to be independent Medicaid providers, but they must first obtain Medicare certification. Medicare no longer certifies therapists who only work with children, and they do not certify speech-language pathologists at all. Rule changes are being made to further clarify which providers of therapy services can be enrolled and reimbursed as Medicaid providers, and under what circumstances Medicare certification is required. Rule changes were also made to reflect Medicare's decision to extend the required physician recertification period for a therapy services plan of care.

Rules changes are also being made to reform Medicaid's mental health program to: (1) help minimize duplication of mental health services, (2) eliminate overlapping components and contradictory requirements, (3) better match mental health benefits to participant's needs, and (4) better ensure that mental health program resources are appropriately used and services are delivered by qualified providers.

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

**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:

These rule changes reflect year one of a three-year planning process to incorporate new evidenced-based benefits and best practices. Also included are changes which improve the management of existing benefits, incorporating standards and applying appropriate limits. As rules are further defined, costs and cost-containment details will be identified. The overall impact is anticipated to slow the expenditure growth of Medicaid-paid mental health services while improving quality and maintaining access. Cost containment will be achieved by establishing clear assessment criteria and reducing inappropriate utilization. There is no anticipated fiscal impact related to the changes to rules associated with occupational therapy and speech language pathology services.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was conducted.

However, a Notice of Intent to Promulgate a rule was not published in the Administrative Bulletin. The Department conducted stakeholder meetings that included the Mental Health Providers Association, National Alliance for the Mentally Ill, Office of Consumer Affairs and Technical Assistance, Idaho Federation of Families, Idaho Psychological Association, National Association of Social Workers, and various participants receiving mental health services and providers of mental health services. The Department did not hold meetings regarding the changes to therapy services because the professional associations whose members provide these services are in favor of the clarifications found in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Pat Guidry at (208) 364-1813.

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 22, 2008.

DATED this 5th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0803**

**010. DEFINITIONS -- A THROUGH H.**

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

**01. AABD.** Aid to the Aged, Blind, and Disabled. (3-30-07)

**02. Abortion.** The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. (3-30-07)

**03. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-30-07)

**04. Ambulatory Surgical Center (ASC).** Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (3-30-07)

**05. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-30-07)

**06. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-30-07)

**07. Audit Reports.** (3-30-07)

- a. Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-30-07)
- b. Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-30-07)
- c. Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-30-07)
08. **Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-30-07)
09. **Basic Plan.** The medical assistance benefits included under this chapter of rules. (3-30-07)
10. **Buy-In Coverage.** The amount the State pays for Part B of Title XVIII of the Social Security Act on behalf of the participant. (3-30-07)
11. **Certified Registered Nurse Anesthetist (CRNA).** A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (3-30-07)
12. **Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-30-07)
13. **CFR.** Code of Federal Regulations. (3-30-07)
14. **Clinical Nurse Specialist.** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)
15. **CMS.** Centers for Medicare and Medicaid Services. (3-30-07)
16. **Collateral Contact.** ~~Contact made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record.~~ Coordination of care communication that is initiated by a medical or qualified professional with members of a participant's interdisciplinary team or consultant to the interdisciplinary team. The need for this service must appear on the treatment plan and must be documented in the progress notes of the participant's medical record. Collateral contact is used to: (3-30-07)( )
- a. Coordinate care between professionals who are serving the participant; ( )
- b. Relay medical results and explanations to members of the participant's interdisciplinary team; or ( )
- c. Conduct an intermittent treatment plan review with the participant and his interdisciplinary team. ( )
17. **Co-Payment.** The amount a participant is required to pay to the provider for specified services. (3-30-07)
18. **Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-30-07)
19. **Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the

provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt as described in Chapter 3, Sections 310 and 312, PRM. (3-30-07)

**20. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-30-07)

**21. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

**22. Dual Eligibles.** Medicaid participants who are also eligible for Medicare. (3-30-07)

**23. Durable Medical Equipment (DME).** Equipment other than prosthetics or orthotics that can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a ~~medical assistance~~ Medicaid participant. (3-30-07)( )

**24. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-30-07)

**a.** Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-30-07)

**b.** Serious impairment to bodily functions. (3-30-07)

**c.** Serious dysfunction of any bodily organ or part. (3-30-07)

**25. EPSDT.** Early and Periodic Screening, Diagnosis, and Treatment. (3-30-07)

**26. Facility.** Facility refers to a hospital, nursing facility, or intermediate care facility for persons with mental retardation. (3-30-07)

**27. Federally Qualified Health Center (FQHC).** An entity that meets the requirements of 42 U.S.C Section 1395x(aa)(4). The FQHC may be located in either a rural or urban area designated as a shortage area or in an area that has a medically underserved population. (3-30-07)

**28. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-30-07)

**29. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to an existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-30-07)

**30. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-30-07)

**31. Home Health Services.** Services ordered by a physician and performed by a licensed nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, "Rules for Home Health Agencies." (3-30-07)

**32. Hospital.** A hospital as defined in Section 39-1301, Idaho Code. (3-30-07)

**33. Hospital-Based Facility.** A nursing facility that is owned, managed, or operated by, or is otherwise a part of a licensed hospital. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

707. MENTAL HEALTH CLINIC SERVICES - DEFINITIONS.

**01. Adult.** An adult is an individual who is eighteen (18) years of age or older for the purposes of Mental Health Clinic and other outpatient mental health services. (3-30-07)

**02. Comprehensive Diagnostic Assessment.** A thorough assessment of the participant's current condition and complete medical and psychiatric history. The comprehensive diagnostic assessment must incorporate information typically gathered in an intake assessment process if an intake assessment has not been completed by the provider agency conducting the comprehensive diagnostic assessment. The comprehensive diagnostic assessment must include: ( )

**a.** A current mental status examination; ( )

**b.** A description of the participant's readiness and motivation to engage in treatment, participate in the development of his treatment plan and adhere to his treatment plan; and ( )

**c.** The five (5) axes diagnoses under DSM-IV-TR with recommendations for level of care, intensity, and expected duration of treatment services. ( )

**03. Functional Assessment.** In rehabilitative mental health, this assessment is used to provide supplemental information to the comprehensive diagnostic assessment and provides information on the current or required capabilities needed by a participant to maintain himself in his chosen environment. It is a description and evaluation of the participant's practical ability to complete tasks that support activities of daily living, family life, life in the community, and promote independence. This assessment assists participants to better understand what skills they need to achieve their rehabilitation goals. ( )

**04. Intake Assessment.** An initial assessment of the participant that is conducted by an agency staff person who has been trained to perform mental status examinations and solicit sensitive health information for the purpose of identifying service needs prior to developing an individualized treatment plan. The intake assessment must contain a description of the reason(s) the participant is seeking services and a description of the participant's current symptoms, present life circumstances across all environments, recent events, resources, and barriers to mental health treatment. If this is the initial screening process then it must be used to determine whether mental health services are a medical necessity for the participant. ( )

**05. Interdisciplinary Team.** Group that consists of two (2) or more individuals in addition to the participant, the participant's legal guardian, and the participant's natural supports, including professionals from several fields who combine their skills and resources to provide guidance and assistance in the creation of the participant's treatment plan. ( )

**06. Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. The nurse practitioner and clinical nurse specialist must have experience prescribing psychotropic medication. ( )

**027. Mental Health Clinic.** A mental health clinic, also referred to as "agency," must be a proprietorship, partnership, corporation, or other entity, in a distinct location, employing at least two (2) staff qualified to deliver clinic services under this rule and operating under the direction of a physician. (3-30-07)

**08. Objective.** A milestone toward meeting the goal that is concrete, measurable, time-limited, and identifies specific behavior changes. ( )

**039. Psychiatric Nurse, Licensed Master's Level.** A certified psychiatric nurse, Clinical Nurse

Specialist or Psychiatric Nurse Practitioner, must be licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. (3-30-07)

**0410. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. (3-30-07)

**11. Psychotherapy.** A method of treating and managing psychiatric disorders through the use of evidenced-based psychotherapeutic modalities that focus on behavioral and cognitive aspects of a participant's abilities. ( )

**12. Recovery Model.** An evidence-based treatment model that supports healing and transformation, enabling a participant with a mental health problem to live a meaningful life in a community of his choice while striving to achieve his full potential. It includes services for participants to build their skills to promote and manage their overall wellness. ( )

**13. Restraints.** Restraints include the use of physical, mechanical, or chemical interventions to modify participant behavior. It also includes the use of seclusion to attempt to modify participant behavior. ( )

**14. Serious Emotional Disturbance (SED).** In accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code, SED is: ( )

**a.** An emotional or behavioral disorder according to the DSM-IV-TR, which results in a serious disability; and ( )

**b.** Requires sustained treatment interventions; and ( )

**c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. ( )

**d.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. ( )

**15. Serious Mental Illness (SMI).** In accordance with Volume 58 of the Federal Register, 29422-02, June 24, 1999, a person with SMI: ( )

**a.** Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and ( )

**b.** Must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. ( )

**0516. Social History.** A social history contains a description of the reason(s) the participant is seeking services, a description of his current symptoms, present life circumstances, recent events, his resources, and barriers to mental health treatment. (3-30-07)

**17. Treatment Plan Review.** The practice of holding a meeting among members of a participant's interdisciplinary team that is focused on evaluating the programs, progress, and future plans of a participant while providing feedback and suggestions intended to help team members and the participant to accomplish the participant's goals as identified on the participant's treatment plan. ( )

**708. MENTAL HEALTH CLINIC SERVICES - PARTICIPANT ELIGIBILITY.**



~~If an individual who is not eligible for medical assistance receives intake services from any staff not having the required degree(s) as provided in Subsection 715.03 of these rules, and later becomes eligible for medical assistance, a new intake assessment and individualized treatment plan will be required which must be developed by a qualified staff person and authorized prior to any reimbursement. Eligibility must be established through the assessment services described under Subsections 709.03.a. through 709.03.c. of these rules. The following are requirements for establishing eligibility for mental health clinic services.~~ (3-30-07)( )

**01. History and Physical Examination.** The participant must have a history and physical examination that has been completed by his primary care physician within the last twelve (12) months immediately preceding the initiation of mental health clinic services and annually thereafter. Mental health services must not be delayed due to the scheduling of the history and physical examination. ( )

**02. Healthy Connections Referral.** A participant who belongs to the Healthy Connections program must be referred to the mental health clinic by his Healthy Connections physician. ( )

**03. Establishment of Service Needs.** The initial assessment of the participant must establish that the services requested by the participant or his legal guardian are therapeutically appropriate and can be provided by the clinic. ( )

**04. Conditions That Require New Intake Assessment and Individualized Treatment Plan.** If an individual who is not eligible for Medicaid receives intake services from any staff who does not have the qualifications required under Subsection 715.03 of these rules, and later becomes eligible for Medicaid, a new intake assessment and individualized treatment plan are required, which must be developed by a professional listed under Subsection 715.03 of these rules. ( )

**7409. MENTAL HEALTH CLINIC SERVICES - COVERAGE AND LIMITATIONS.**

All mental health clinic services must be provided at the clinic unless provided to an eligible homeless individual. (3-30-07)

**01. Clinic Services -- Mental Health Clinics (MHC).** Under 42 CFR 440.90, the Department will pay for preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services provided by a mental health clinic to a participant who is not an inpatient in a hospital or nursing home or correctional facility except as specified under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 229. (3-30-07)

**02. Services or Supplies in Mental Health Clinics That Are Not Reimbursed.** Any service or supplies not included as part of the allowable scope of ~~the Medical Assistance Program~~ Medicaid. (3-30-07)( )

**03. Evaluation and Diagnostic Services in Mental Health Clinics.** (3-30-07)

**a. Social History** An intake assessment is a reimbursable evaluation ~~and diagnostic~~ service. (1-1-08)F( )

**i.** The intake assessment must be conducted by staff trained to perform mental status examinations and to conduct interviews intended to solicit sensitive health information for the purpose of identifying a participant's treatment needs and developing an individualized treatment plan. ( )

**ii.** The intake assessment must be documented in the participant's medical record and must contain a current mental status examination and a review of the participant's strengths and needs. ( )

**b.** A comprehensive diagnostic assessment is a reimbursable service when delivered by one (1) of the following licensed professionals: ( )

**i.** Psychiatrist; ( )

**ii.** Physician; ( )

**iii.** Practitioner of the healing arts; ( )

- iv. Psychologist; ( )
- v. Clinical Social Worker; ( )
- vi. Clinical Professional Counselor; or ( )
- vii. Licensed Marriage and Family Therapist. ( )

c. Functional assessment is a reimbursable evaluation service when the comprehensive diagnostic evaluation indicates that the participant may benefit from rehabilitative skill training. A functional assessment must be conducted by a qualified staff person capable of assessing a participant's strengths and needs. The functional assessment must describe and evaluate the participant's practical ability to complete tasks that support activities of daily living, family life, life in the community, and that promote independence. ( )

~~b1.~~ Psychological testing may be provided as a reimbursable service when provided in direct response to a specific evaluation question. The psychological report must contain the reason for the performance of this service. Agency staff may deliver this service if they meet one (1) of the following qualifications: (1-1-08)T

- i. Licensed Psychologist; (3-30-07)
- ii. Psychologist extenders as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners"; or (3-30-07)
- iii. A qualified therapist listed in Subsection 715.03 of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. (3-30-07)

~~e. A psychiatric diagnostic interview exam may be provided as a reimbursable service when delivered by one (1) of the following licensed professionals:~~ (1-1-08)T

- ~~i. Psychiatrist;~~ (3-30-07)
- ~~ii. Physician;~~ (3-30-07)
- ~~iii. Practitioner of the healing arts;~~ (3-30-07)
- ~~iv. Psychologist;~~ (3-30-07)
- ~~v. Clinical Social Worker;~~ (3-30-07)
- ~~vi. Clinical Professional Counselor; or~~ (3-30-07)
- ~~vii. Licensed Marriage and Family Therapist.~~ (3-30-07)

~~d. Evaluations performed by qualified registered occupational therapists, O.T.R., performed in conjunction with the development of an individualized treatment plan are reimbursable.~~ (1-1-08)T

**04. Psychotherapy Treatment Services in Mental Health Clinics.** Individual and group psychotherapy must be provided in accordance with the goals specified in the individualized treatment plan as described in Section 709~~10~~ of these rules. (1-1-08)T( )

**05. Family Psychotherapy.** Family psychotherapy services must be delivered in accordance with the goals of treatment as specified in the individualized treatment plan. The focus of family psychotherapy is on the dynamics within the family structure as it relates to the participant and methods to create change for unhealthy patterns. (1-1-08)T( )

- a. Family psychotherapy services with the participant present must: (1-1-08)T
- i. Be face-to-face with at least one (1) family member present in addition to the participant; (1-1-08)T
- ii. Focus the treatment services on goals identified in the participant's individualized treatment plan; (1-1-08)T
- and
- iii. Utilize an evidence-based treatment model. (1-1-08)T
- b. Family psychotherapy without the participant present must: (1-1-08)T
- i. Be face-to-face with at least one (1) family member present; (1-1-08)T
- ii. Focus the services on the participant; and (1-1-08)T
- iii. Utilize an evidence-based treatment model. (1-1-08)T
- 06. Emergency Psychotherapy Services.** Individual emergency psychotherapy services can be provided by qualified clinic staff at any time. (1-1-08)T
- a. Emergency services provided to an eligible participant prior to intake and evaluation is a reimbursable service but must be fully documented in the participant's medical record; and (~~3-30-07~~)( )
- b. Each emergency service will be counted as a unit of service and part of the allowable limit per participant unless the contact results in hospitalization. Provider agencies may submit claims for the provision of psychotherapy in emergency situations even when contact does not result in the hospitalization of the participant. (3-30-07)
- 07. Collateral Contact.** Collateral contact, as defined in Section 010 of these rules, is ~~covered by Medicaid if a reimbursable service when~~ it is included on the individualized treatment plan and it is necessary to gather and exchange information, ~~provide interpretation or explanation of results of psychiatric evaluations, medical examinations and procedures, other accumulated data to family or other responsible persons, with members of the participant's interdisciplinary team,~~ or advise them how to assist the participant. (~~1-1-08~~)( )
- a. Collateral contact ~~may can~~ be provided face-to-face by agency staff ~~qualified to deliver clinical providing treatment~~ services. Face-to-face contact is defined as two (2) or more people meeting in person at the same time: (~~1-1-08~~)( )
- b. Collateral contact ~~may can~~ be provided by telephone by agency staff ~~qualified to deliver clinical providing treatment~~ services when this is the most expeditious and effective way to exchange information. (~~1-1-08~~)( )
- 08. Pharmacological Management.** Pharmacological management is a reimbursable service when consultations ~~must be~~ are provided by a physician or other practitioner of the healing arts within the scope of practice defined in their license in direct contact with the participant. (~~3-30-07~~)( )
- a. Consultation must be for the purpose of prescribing, monitoring, and/or administering medication as part of the participant's individualized treatment plan; and (~~3-30-07~~)( )
- b. Pharmacological management, if provided, must be ~~part of the~~ specified on the participant's individualized treatment plan and must include the frequency and duration of the treatment ~~must be specified~~. (~~3-30-07~~)( )
- 09. Nursing Services.** Nursing services; are reimbursable when physician ordered and supervised, ~~can be and included as~~ part of the participant's individualized treatment plan. (~~3-30-07~~)( )

a. Licensed and qualified nursing personnel can supervise, monitor, and administer medication within the limits of the Nurse Practice Act, Section 54-1402(d), Idaho Code; and (3-30-07)

b. The frequency and duration of the treatment must be specified on the participant's individualized treatment plan. (3-30-07)

**10. Limits on Mental Health Clinic Services.** Services provided by Mental Health Clinics are limited to twenty-six (26) services per calendar year. This is for any combination of evaluation, diagnosis and treatment services. A total of twelve (12) hours is the maximum time allowed for a combination of any evaluative or diagnostic services and individualized treatment plan development provided to an eligible participant in a calendar year. (1-1-08)T

**70910. MENTAL HEALTH CLINIC SERVICES - WRITTEN INDIVIDUALIZED TREATMENT PLAN.**

A written individualized treatment plan is a medically-ordered plan of care. An individualized treatment plan must be developed and implemented for each participant receiving mental health clinic services. Timeframes for treatment plans must not exceed six (6) months. After six (6) months of treatment, if the interdisciplinary team determines that the treatment plan should continue, the provider must obtain a prior authorization from the Department. Treatment planning is reimbursable if conducted by a qualified professional identified in Subsection 715.03 of these rules. (3-30-07)(\_\_\_\_)

**01. Individualized Treatment Plan Development.** The individualized treatment plan must be developed by the following: (3-30-07)

a. The ~~clinic~~ treatment staff providing the services; and (3-30-07)(\_\_\_\_)

b. The ~~adult~~ participant, if capable, and ~~the adult participant's~~ his legal guardian, ~~or in the case of a minor the minor's parent or legal guardian.~~ The participant ~~or his parent or~~ and his legal guardian may also choose others to participate in the development of the plan. (3-30-07)(\_\_\_\_)

**02. Individualized Treatment Plan Requirements.** An individualized treatment plan must include, at a minimum, the following: (3-30-07)

a. Statement of the overall goals as identified by the participant or his legal guardian and concrete, measurable treatment objectives to be achieved by the participant, including time frames for completion. The goals and objectives must be individualized, ~~and must be directly related to the clinic service needs that are identified in the assessment~~ must reflect the goals chosen by the participant or his legal guardian and address the emotional, behavioral, and skill training needs identified by the participant or his legal guardian through the intake and assessment process. The treatment goals must be specific to the type of interventions used and must specify the frequency and anticipated duration of therapeutic services. (3-30-07)(\_\_\_\_)

b. Documentation of who participated in the development of the individualized treatment plan. (3-30-07)

i. The authorizing physician must sign and date the plan within thirty (30) calendar days of the initiation of treatment. (3-30-07)

ii. The ~~adult~~ participant, ~~the adult participant's~~ and his legal guardian, ~~or in the case of a minor the minor's parent or legal guardian~~ must sign the treatment plan indicating their agreement with service needs identified and their participation in its development. If these signatures indicating participation in the development of the treatment plan are not obtained, then the agency must document in the participant's record the reason the signatures were not obtained, including the reason for the participant's refusal to sign. A copy of the treatment plan must be given to the ~~adult~~ participant and his legal guardian ~~or to his parent or legal guardian if the participant is a minor.~~ (3-30-07)(\_\_\_\_)

iii. Other individuals who participated in the development of the treatment plan must sign the plan. (3-30-07)

iv. The author of the treatment plan must sign and date the plan and include his title and credentials. (3-30-07)(\_\_\_\_)

c. ~~The diagnosis of the participant must be documented by an examination and be made by a licensed physician or other licensed practitioner of the healing arts, licensed psychologist, licensed clinical professional counselor, licensed clinical social worker, or licensed marriage and family therapist within the scope of his practice under state law; and~~ The treatment plan must be created in direct response to the findings of the intake and assessment process. (3-30-07)(\_\_\_\_)

d. ~~A problem~~ The treatment plan must include a prioritized list of issues for which treatment is being sought, and the type, frequency, and duration of treatment estimated to achieve all objectives based on the ability of the participant to effectively utilize services. (3-30-07)(\_\_\_\_)

e. Tasks that are specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan that are recommended by the participant's interdisciplinary team and agreed to by the participant or his legal guardian. Each task description must specify the anticipated place of service, the frequency of services, the type of service, and the person(s) responsible to provide the service. (\_\_\_\_)

f. Discharge criteria and aftercare plans must also be identified on the treatment plan. (\_\_\_\_)

**03. Treatment Plan Reviews.** ~~The agency staff must conduct intermittent treatment plan reviews by the clinic and the participant must occur when medically necessary. The intermittent treatment plan reviews must be conducted within the participant or his legal guardian at least every one hundred twenty (120) days and every one hundred twenty (120) days thereafter.~~ During the reviews, the ~~clinic~~ agency staff providing the services, ~~and the participant, and any other members of the participant's interdisciplinary team as identified by the participant or his legal guardian~~ must review the progress the participant has made on objectives and identify objectives that may be added, amended, or deleted from the individualized treatment plan. The attendees of the treatment plan review are determined by the ~~adult~~ participant or his legal guardian, ~~or in the case of a minor his parent or legal guardian~~ and ~~clinic~~ agency staff providing the services. (3-30-07)(\_\_\_\_)

**04. Physician Review of Treatment Plan.** Each individualized treatment plan must be reviewed and be completely rewritten and signed by a physician at least annually. Changes in the types, duration, or amount of services that are determined during treatment plan reviews must be reviewed and signed by a physician. Projected dates for the participant's reevaluation and the rewrite of the individualized treatment plan must be recorded on the treatment plan. (3-30-07)(\_\_\_\_)

**05. Continuation of Services.** Continuation of services after ~~the first year~~ six (6) months must be based on documentation of the following: (3-30-07)(\_\_\_\_)

a. Description of the ways the participant has specifically benefited from ~~clinical~~ mental health services, and why he continues to need additional ~~clinical~~ mental health services; and (3-30-07)(\_\_\_\_)

b. The participant's progress toward the achievement of therapeutic goals that would eliminate the need for the service to continue. (3-30-07)

## 711. MENTAL HEALTH CLINIC SERVICES - EXCLUDED SERVICES NOT REIMBURSABLE UNDER MEDICAID.

**01. Inpatient Medical Facilities.** ~~The Medical Assistance Program~~ Medicaid will not pay for mental health clinic services rendered to ~~medical assistance~~ eligible participants residing in inpatient medical facilities including nursing homes, hospitals, or public institutions as defined in 42 CFR 435.1009; or (3-30-07)(\_\_\_\_)

**02. Non-Reimbursable.** ~~Any service not adequately documented in the participant's record by the signature of the therapist providing the therapy or participant contact, the length of the therapy session, and the date of the contact, will not be reimbursed by the Department.~~ The Department will not reimburse a service unless the participant's medical record includes the signature and credential of the therapist providing the therapy or participant

contact, the length of the therapy session, and the date of the contact. (3-30-07)( )

**03. Non-Eligible Staff.** Any treatment or contact provided as a result of an individualized treatment plan that is performed by any staff other than those qualified to deliver services under Subsection 715.03 of these rules is not be eligible for reimbursement by the Department. (3-30-07)

**04. Recoupment.** If a record is determined not to meet minimum requirements as set forth herein, any payments made on behalf of the participant are subject to recoupment. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**713. ~~MENTAL HEALTH CLINIC SERVICES - PROVIDER RESPONSIBILITIES (RESERVED).~~**

~~**01. Effectiveness of Services.** Effectiveness of services, as measured by a participant's achievement of his plan objectives, must be monitored by the provider and changes to the individualized treatment plan must be initiated when service needs change or interventions are shown to be ineffective. These measures must be included on the participant's one hundred twenty (120) day review. (3-30-07)~~

~~**02. Healthy Connections Referral.** Providers must obtain a Healthy Connections referral if the participant is enrolled in the Healthy Connections program. (3-30-07)~~

**714. MENTAL HEALTH CLINIC SERVICES - PROVIDER AGENCY REQUIREMENTS.**

Each agency that enters into a provider agreement with the Department for the provision of mental health clinic services must meet the following requirements: (3-30-07)

**01. Healthy Connections Referral.** Provider agencies must obtain a Healthy Connections referral if the participant is enrolled in the Healthy Connections program and document the referral in the participant's medical record. Provider agencies must document compliance with the requirements under Subsection 708.01 of these rules. ( )

**02. Effectiveness of Services.** Effectiveness of services, as measured by a participant's achievement of his plan objectives, must be monitored by the provider and changes to the individualized treatment plan must be initiated when service needs change or interventions are shown to be ineffective. These measures must be included in the participant's treatment plan review. ( )

**03. Staff to Participant Ratio.** The following treatment staff-to-participant ratios for group treatment services must be observed: ( )

**a.** For children under six (6) years of age, the ratio must be 1:1. No group work is allowed. ( )

**b.** For children six (6) to twelve (12) years of age, the ratio must be 1:6 for groups. Group size must not exceed twelve (12) participants. ( )

**c.** For children over age twelve (12) years of age, the ratio must be 1:10 ratio for groups. Group size must not exceed twelve (12) participants. ( )

**04. Family Participation Requirement.** The following standards must be observed for services provided to children: ( )

**a.** For children under six (6) years of age, the participant's legal guardian must be present during the delivery of mental health services. The legal guardian does not have to participate in the treatment session, but must be present and available for consultation with the staff providing the service; ( )

**b.** For children six (6) to twelve (12) years of age, the participant's legal guardian must be actively

involved. The legal guardian does not have to participate in the treatment session but must be available for consultation with the staff providing the service; ( )

c. For children over age twelve (12) years of age, the participant's legal guardian may participate as appropriate. If the interdisciplinary team recommends that the legal guardian not be involved in any aspect of the treatment, then the reasons for excluding the legal guardian must be documented in the medical record. ( )

**045. Mental Health Clinic.** Each location of the agency must meet the requirements under this rule. (3-30-07)

**026. Physician Requirement for Clinic Supervision.** In order to fulfill the requirement that the clinic be under the direction of a physician, the clinic must have a contract with the physician. (3-30-07)

**a.** The contract must specifically require that the physician spend as much time in the clinic as is necessary to assure that participants are receiving services in a safe and efficient manner in accordance with accepted standards of medical practice. (3-30-07)

**b.** The supervising physician of the clinic may also serve as the supervising physician of a participant's care. (3-30-07)

**037. Physician Requirement for Supervision of a Participant's Care.** Each participant's care must be under the supervision of a physician directly affiliated with the clinic. Documentation of the affiliation must be kept in the clinic location. The clinic may have as many physician affiliations as is necessary in order to meet the needs of the volume of participants served in that location. The physician who supervises a participant's care does not have to deliver this service at the clinic nor does the physician have to be present at the clinic when the participant receives services at the clinic. In order to fulfill the requirement for physician supervision of a participant's care, the following conditions must also be met: (3-30-07)

**a.** The clinic and the physician must enter into a formal arrangement in which the physician must assume professional responsibility for the services provided; (3-30-07)

**b.** The physician must see the participant at least once annually to determine the medical necessity and appropriateness of clinic services; ~~(3-30-07)~~( )

**c.** The physician must review and sign the individualized treatment plan as an indicator that the services are medically necessary and prescribed; and ~~(3-30-07)~~( )

**d.** The physician must review and sign all updates to the individualized treatment plan that involve changes in the types or amounts of services and must sign all intermittent treatment plan reviews that represent substantial changes in the goals, objectives, or services. ~~(3-30-07)~~( )

**048. Intake Assessment.** All treatment in mental health clinics must be based on an individualized intake assessment of the participant's needs, ~~including a current mental status examination, defined in Section 707 of these rules~~ and provided under the direction of a licensed physician. ~~(3-30-07)~~( )

**059. Criminal History Checks.** (3-30-07)

**a.** The agency must verify that all employees, subcontractors, or agents of the agency providing direct care or clinical services have complied with IDAPA 16.05.06, "Criminal History and Background Checks."(3-30-07)

**b.** Once an employee, subcontractor, or agent of the agency has met the requirements specified in Subsection 009.02.a. of these rules, he may begin working for the agency on a provisional basis. (3-30-07)

**c.** Once an employee, subcontractor, or agent of the agency has received a criminal history clearance, any additional criminal convictions must be reported to the Department when the agency learns of the conviction. (3-30-07)

**0610. Agency Employees and Subcontractors.** Employees and subcontractors of the agency are subject to the same conditions, restrictions, qualifications and rules as the agency. (3-30-07)

**0711. Supervision.** The agency must ensure that staff providing clinical services are supervised according to the following guidelines: (3-30-07)

- a. Standards and requirements for supervision set by the Bureau of Occupational Licenses are met; (3-30-07)
- b. Case-specific supervisory contact must be made weekly, at a minimum, with staff for whom supervision is a requirement; and (3-30-07)
- c. Documentation of supervision must be maintained by the agency and be available for review by the Department. (3-30-07)

**12. Restraints and Seclusion.** Restraints and seclusion must only be used when the participant's behavior poses a threat of physical harm to himself or others. If an agency intends to use restraints to deal with maladaptive participant behavior the following conditions must be in place: ( )

**a.** Use of physical prompts, restraints, and seclusion to manage maladaptive participant behavior must be incorporated into the participant's individualized treatment plan. ( )

**b.** The agency must develop and implement written policies and procedures outlining: ( )

i. Medical necessity of restraints; ( )

ii. Conditions or triggers which will prompt use of restraints; ( )

iii. Type(s) of restraints which will be used; ( )

iv. How long a restraint may be used; ( )

v. Treatment staff in the clinic who will be authorized to employ restraints; ( )

vi. The training or certification of staff qualified to employ restraints; ( )

vii. How the agency will monitor use of restraints so as to not result in physical, mental, or emotional injury to the participant; and ( )

viii. Agency notification requirements for use of restraints to include notification of the participant's parent or legal guardian, and physician. ( )

**c.** The agency will complete an incident report for each use of restraints documenting the following: ( )

i. Type of restraint; ( )

ii. Restraint start time; ( )

iii. Triggering condition or behavior; ( )

iv. Staff member employing restraint; ( )

v. Restraint end time; ( )

vi. Participant response to the restraint intervention; and ( )



vii. Alternate methods attempted and results prior to the use of restraints or seclusion. ( )

d. Following the use of restraints or seclusion, a behavior modification plan must be developed by a qualified staff person and approved by the interdisciplinary team. ( )

e. Restraints or seclusion cannot be used for punishment, staff convenience, or lack of staff's ability to manage the participant's behavior. ( )

f. Adversive techniques or interventions are not allowed under any circumstances. ( )

**0813. Continuing Education.** The agency must ensure that all staff complete twenty (20) hours of continuing education annually in the field in which they are licensed. Documentation of the continuing education hours must be maintained by the agency and be available for review by the Department. Nothing in these rules will affect professional licensing continuing education standards and requirements set by the Bureau of Occupational Licenses. (3-30-07)

**0914. Ethics.** (3-30-07)

a. The provider must adopt, adhere to and enforce a Code of Ethics on its staff who are providing Medicaid reimbursable services. The Code of Ethics must be similar to or patterned after one (1) of the following: (3-30-07)

i. US Psychiatric Rehabilitation Association Code of Ethics found at <http://www.uspra.org/i4a/pages/index.cfm?pageid=3601>; (3-30-07)

ii. National Association of Social Workers Code of Ethics found at <http://www.naswdc.org/pubs/code/default.asp>; (3-30-07)

iii. American Psychological Association Code of Ethics found at <http://www.apa.org/ethics/code.html>; (3-30-07)

iv. American Counseling Association Code of Ethics found at <http://www.counseling.org/Resources/CodeOfEthics/TP/Home/CT2.aspx>. (3-30-07)

v. Marriage and Family Therapists Code of Ethics found at [www.aamft.org/resources/lrm\\_plan/ethics/ethicscode2001.asp](http://www.aamft.org/resources/lrm_plan/ethics/ethicscode2001.asp). (3-30-07)

b. The Provider must develop a schedule for providing ethics training to its staff. (3-30-07)

c. The ethics training schedule must provide that new employees receive the training during their first year of employment, and that all staff receive ethics training no less than four (4) hours every four (4) years thereafter. (3-30-07)

d. Evidence of the Agency's Code of Ethics, the discipline(s) upon which it is modeled, and each staff member's training on the Code must be submitted to the Department upon request. (3-30-07)

**105. Building Standards For Mental Health Clinics.** (3-30-07)

a. Accessibility. Mental health clinic service providers must be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. (3-30-07)

b. Environment. Clinics must be designed and equipped to meet the needs of each participant including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. (3-30-07)

c. Capacity. Clinics must provide qualified staff as listed in Subsection 715.01 of ~~the~~ these rules to meet a staff to participant ratio required under Subsection 714.03 of this rule that ensures safe, effective and clinically

- appropriate interventions. ~~(3-30-07)~~(\_\_\_\_)
- d.** Fire and Safety Standards. (3-30-07)
- i. Clinic facilities must meet all local and state codes concerning fire and life safety. The owner/operator must have the facility inspected at least annually by the local fire authority and successfully pass the inspection. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available upon request and must include documentation of any necessary corrective action taken on violations cited; and ~~(3-30-07)~~(\_\_\_\_)
- ii. The clinic facility must be structurally sound and must be maintained and equipped to assure the safety of participants, employees and the public; and (3-30-07)
- iii. In clinic facilities where natural or man-made hazards are present, suitable fences, guards or railings must be provided to protect participants; and (3-30-07)
- iv. Clinic facilities must be kept free from the accumulation of weeds, trash and rubbish; and (3-30-07)
- v. Portable heating devices are prohibited except units that have heating elements that are limited to not more than two hundred twelve (212F) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind are prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and (3-30-07)
- vi. Flammable or combustible materials must not be stored in the clinic facility; and (3-30-07)
- vii. All hazardous or toxic substances must be properly labeled and stored under lock and key; and (3-30-07)
- viii. Water temperatures in areas accessed by participants must not exceed one hundred twenty (120) degrees Fahrenheit; and (3-30-07)
- ix. Portable fire extinguishers must be installed throughout the clinic facility. Numbers, types and location must be directed by the applicable fire authority noted in Subsection 714.105.d. of this rule; and ~~(3-30-07)~~(\_\_\_\_)
- x. Electrical installations and equipment must comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded must be maintained in a grounded condition and extension cords and multiple electrical outlet adapters must not be utilized unless U.L. approved and the numbers, location, and use of them are approved in writing by the local fire or building authority. (3-30-07)
- xi. There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone or where they can be easily accessed; and (3-30-07)
- xii. Furnishings, decorations or other objects must not obstruct exits or access to exits. (3-30-07)
- e.** Emergency Plans and Training Requirements. (3-30-07)
- i. Evacuation plans must be posted throughout the facility. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building. (3-30-07)
- ii. There must be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and (3-30-07)
- iii. All employees must participate in fire and safety training upon employment and at least annually thereafter; and (3-30-07)

- iv. All employees and partial care participants must engage in quarterly fire drills. At least two (2) of these fire drills must include evacuation of the building; and (3-30-07)
- v. A brief summary of the fire drill and the response of the employees and partial care participants must be written and maintained on file. The summary must indicate the date and time the drill occurred, problems encountered and corrective action taken. (3-30-07)
- f. Food Preparation and Storage.** (3-30-07)
- i. If foods are prepared in the clinic facility, they must be stored in such a manner as to prevent contamination and be prepared using sanitary methods. (3-30-07)
- ii. Except during actual preparation time, cold perishable foods must be stored and served under forty-five (45F) degrees Fahrenheit and hot perishable foods must be stored and served over one hundred forty (140F) degrees Fahrenheit. (3-30-07)
- iii. Refrigerators and freezers used to store participant lunches and other perishable foods used by participants, must be equipped with a reliable, easily-readable thermometer. Refrigerators must be maintained at forty-five (45F) degrees Fahrenheit or below. Freezers must be maintained at zero (0F) to ten (10F) degrees Fahrenheit or below. (3-30-07)
- iv. When meals are prepared or provided for by the clinic, meals must be nutritional. (3-30-07)
- g. Housekeeping and Maintenance Services.** (3-30-07)
- i. The interior and exterior of the clinic facility must be maintained in a clean, safe and orderly manner and must be kept in good repair; and (3-30-07)
- ii. Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and (3-30-07)
- iii. All housekeeping equipment must be in good repair and maintained in a clean, safe and sanitary manner; and (3-30-07)
- iv. The clinic facility must be maintained free from infestations of insects, rodents and other pests; and (3-30-07)
- v. The clinic facility must maintain the temperature and humidity within a normal comfort range by heating, air conditioning, or other means. (3-30-07)
- vi. Garbage will be disposed of in a sanitary manner. It must not be allowed to accumulate and must be placed in leak-proof bags. (3-30-07)
- h. Firearms.** No firearms are permitted in the clinic facility. (3-30-07)
- i. Plumbing.** Restroom facilities must be maintained in good working order and available and accessible to participants while at the clinic in accordance with the Americans with Disabilities Act. This includes the presence of running water for operation of the toilet and washing hands. (3-30-07)
- j. Lighting.** Lighting levels must be maintained throughout the clinic facility which are appropriate to the service being provided. (3-30-07)
- k. Drinking Water.** Where the source is other than a public water system or commercially bottled, water quality must be tested and approved annually by the district health department. (3-30-07)

**715. MENTAL HEALTH CLINIC SERVICES - AGENCY STAFF QUALIFICATIONS.**

**01. Staff Qualifications.** The mental health clinic must assure that each agency staff person delivering ~~clinical treatment~~ services to eligible ~~medical-assistance~~ Medicaid participants has, at a minimum, one (1) or more of the following qualifications: ~~(3-30-07)(\_\_\_\_\_)~~

- a. Licensed Psychiatrist; (3-30-07)
- b. Licensed Physician or Licensed Practitioner of the healing arts; (3-30-07)
- c. Licensed Psychologist; (3-30-07)
- d. Psychologist Extender, registered with the Bureau of Occupational Licenses; (3-30-07)
- e. Licensed Masters Social Worker; (3-30-07)
- f. Licensed Clinical Social Worker; (3-30-07)
- g. Licensed Social Worker; (3-30-07)
- h. Licensed Clinical Professional Counselor; (3-30-07)
- i. Licensed Professional Counselor; (3-30-07)
- j. Licensed Marriage and Family Therapist; (3-30-07)
- k. Licensed Associate Marriage and Family Therapist; (\_\_\_\_)
- ~~l.~~ Certified Psychiatric Nurse, (RN), as described in Subsection 707.03 of these rules; or ~~(3-30-07)(\_\_\_\_\_)~~
- lm. Licensed Professional Nurse, RN.; ~~or~~ ~~(3-30-07)(\_\_\_\_\_)~~
- ~~m.~~ ~~Registered Occupational Therapist, O.T.R.;~~ ~~(3-30-07)~~

**02. Support Staff.** For the purposes of this rule, support staff is any person who does not meet the qualifications of professionals as listed in Subsection 715.01 of this rule. The agency may elect to employ support staff to provide support services to participants. Such support services may include providing transportation, cooking and serving meals, cleaning and maintaining the physical plant, or providing general, non-professional supervision. Support staff must not deliver or assist in the delivery of services that are reimbursable by Medicaid. (3-30-07)

**03. Qualified ~~Therapist~~ Interdisciplinary Treatment Planning Staff.** The ~~social history and~~ individualized treatment plan development is reimbursable if conducted by a ~~primary therapist~~ qualified staff person who, at a minimum, has one (1) or more of the following qualifications: ~~(3-30-07)(\_\_\_\_\_)~~

- a. Licensed Psychologist; (3-30-07)
- b. Psychologist Extender, registered with the Bureau of Occupational Licenses; (3-30-07)
- c. Licensed Masters Social Worker; ~~or Licensed Clinical Social Worker, or Licensed Social Worker;~~ ~~(3-30-07)(\_\_\_\_\_)~~
- d. Licensed Clinical Social Worker; (\_\_\_\_)
- ~~de.~~ Certified Psychiatric Nurse, (RN); (3-30-07)
- ~~ef.~~ Licensed Clinical Professional Counselor; ~~or Licensed Professional Counselor;~~ ~~(3-30-07)(\_\_\_\_\_)~~

- g.** Licensed Professional Counselor: ( )
- h.** Licensed Physician ~~or Licensed Psychiatrist;~~ (3-30-07)( )
- i.** Licensed Psychiatrist: ( )
- g.i.** Licensed Marriage and Family Therapist; ~~or~~ (3-30-07)( )
- k.** Licensed Associate Marriage and Family Therapist; or ( )
- h.l.** Licensed Professional Nurse, (RN). (3-30-07)( )

**04. Non-Qualified Staff.** Any delivery of evaluation, diagnostic service, or treatment designed by any person other than an agency staff person designated as qualified under Sections 7409 or 715 of these rules, is not eligible for reimbursement under the ~~Medical Assistance Program~~ Medicaid. (3-30-07)( )

**05. Staff Qualifications for Psychotherapy Services.** Licensed, qualified professionals providing psychotherapy services as set forth in Subsections ~~7409.054.a.~~ through ~~7409.54.e.~~ of these rules must have, at a minimum, one (1) or more of the following ~~degrees~~ credentials: (3-30-07)( )

- a.** Licensed Psychiatrist; (3-30-07)
- b.** Licensed Physician; (3-30-07)
- c.** Licensed Psychologist; (3-30-07)
- d.** Licensed Clinical Social Worker; (3-30-07)
- e.** Licensed Clinical Professional Counselor; (3-30-07)
- f.** Licensed Marriage and Family Therapist; (3-30-07)
- g.** Certified Psychiatric Nurse (RN), as described in Subsection 707.039 of these rules; (3-30-07)( )

**h.** Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified under Subsections 715.405.a. through 715.40.g. of this rule; (3-30-07)( )

**i.** Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; ~~or~~ (3-30-07)( )

**j.** Licensed Associate Marriage and Family Therapist whose provision of psychotherapy is supervised as described in IDAPA 25.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or ( )

- jk.** A Psychologist Extender, registered with the Bureau of Occupational Licenses. (3-30-07)

**716. MENTAL HEALTH CLINIC SERVICES - RECORD REQUIREMENTS FOR PROVIDERS.**

**01. ~~Social Histories~~ Intake Assessments.** ~~Social histories~~ Intake assessments must be contained in all participant medical records. (3-30-07)( )

**02. Informed Consent.** The agency must ensure that participants who receive services through the agency have obtained informed consent from the participant or his legal guardian indicating agreement with all of the elements on the individualized treatment plan including choice of the provider agency, designated services, times, dates, frequencies, objectives, goals, and exit criteria. For minors, informed consent must be obtained from the minor's parent or legal guardian. (3-30-07)

**03. Documentation.** All intake histories, psychiatric evaluations, psychological testing, or specialty evaluations must be in written form, dated, and fully signed to certify when completed and by whom, and retained in the participant's file for documentation purposes. (3-30-07)

**04. Data.** All data gathered must be directed towards formulation of a written diagnosis, problem list, and individualized treatment plan which specifies the type, frequency, and anticipated duration of treatment. (3-30-07)

**05. Mental Health Clinic Record-Keeping Requirements.** (3-30-07)

**a.** Maintenance. Each mental health clinic will be required to maintain records on all services provided to ~~medical assistance~~ Medicaid participants. (~~3-30-07~~)( )

**b.** Record Contents. The records must contain the current individualized treatment plan ordered by a physician and must meet the requirements as set forth in Section ~~709~~10 of this rule. (~~3-30-07~~)( )

**c.** Requirements. The records must: (3-30-07)

i. Specify the exact type of treatment provided; and (3-30-07)

ii. Who the treatment was provided by; and (3-30-07)

iii. Specify the duration of the treatment and the time of day delivered; and (3-30-07)

iv. Contain detailed records which outline exactly what occurred during the therapy session or participant contact documented by the person who delivered the service; and (3-30-07)

v. Contain the legible, dated signature, with degree credentials listed, of the staff member performing the service. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**733. THERAPY SERVICES - PROCEDURAL REQUIREMENTS.**

The Department will pay for therapy services rendered by or under the supervision of a licensed therapist if such services are ordered by the attending physician, nurse practitioner, or physician assistant as part of a plan of care. (4-2-08)

**01. Physician Orders.** (4-2-08)

**a.** All therapy must be ordered by a physician, nurse practitioner, or physician assistant. Such orders must include at a minimum, the service to be provided, the frequency, and, where applicable, the duration of each therapeutic session. (4-2-08)

**b.** In the event that services are required for extended periods, these services must be reordered as necessary, but at least every ~~thirty~~ ninety (~~30~~) days for all participants with the following exceptions: (~~4-2-08~~)( )

i. Therapy provided by home health agencies must be included in the home health plan of care and be reordered at least every sixty (60) days. (4-2-08)

ii. Therapy for individuals with chronic medical conditions, as documented by physician, nurse practitioner, or physician assistant, must be reordered at least every six (6) months. (4-2-08)

**02. Level of Supervision.** (4-2-08)

**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. (4-2-08)

**b.** Direct supervision of therapy assistants is required when therapy services are provided by independent practitioners. (4-2-08)

**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." (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**735. THERAPY SERVICES - PROVIDER REIMBURSEMENT.**

**01. Payment for Therapy Services.** The payment for 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. (4-2-08)

**02. Payment Procedures.** Payment procedures are as follows: (3-30-07)

**a.** 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." (4-2-08)

**b.** Therapists identified by Medicare as independent practitioners, licensed by the appropriate state licensing board and enrolled as Medicaid providers will be 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. Exceptions to the requirement for Medicare certification include:

**i.** Provider types that Medicare does not certify as is the case for speech-language pathologists; and ( )

**ii.** Providers that only treat pediatric participants and do not expect to treat Medicare participants. ( )

**iii.** Only ~~these~~ those independent practitioners who have been enrolled as Medicaid providers can bill the Department directly for their services. A therapy assistant cannot bill Medicaid directly. The maximum fee will be based upon the Department's fee schedule, available from the central office for the Division of Medicaid, the contact information for which is found in Section 005 of these rules. (4-2-08)( )

**c.** 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. (4-2-08)

**d.** Payment for 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." (4-2-08)

**e.** Payment for therapy services rendered to participants in school-based services is described in Section 855 of these rules. (4-2-08)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0801

### 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) & (l), and 56-250 through 257, Idaho Code; 42 CFR Parts 431, 440 and 441.

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

<b>TUESDAY OCTOBER 14, 2008 7:00 pm</b>	<b>WEDNESDAY OCTOBER 15, 2008 7:00 pm</b>	<b>THURSDAY OCTOBER 16, 2008 7:00 pm</b>
<b>DHW Region VI Office Human Development Center 421 Memorial Dr., Room 212 Pocatello, ID</b>	<b>DHW Region IV Office 1720 Westgate Dr., Suite D Room 119 Boise, ID</b>	<b>DHW Region I Office 1120 Ironwood Dr., Suite 102 Large Conference Room Coeur d'Alene, ID</b>

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:

In order to maintain high quality services and on-going compliance with federal regulations, these rules have been amended and reorganized. The changes being made provide evidence-based practices and requirements for providers that provide service coordination services and participants who are eligible and need service coordination. A moratorium is currently in place on some of the new federal regulations governing these services and is expected to expire on April 1, 2009. These rules changes will allow us to be prepared for the expiration of the moratorium and to have rules to meet these federal regulations.

The rules have been amended to:

1. Change reimbursement for providers from a flat monthly rate to 15-minute increments;
2. Ensure participants have a single service coordinator;
3. Ensure service coordination providers do not have conflicts-of-interest that lead to self-referrals;
4. Modify time frame for service coordination during the participant's transition from an institution;
5. Modify requirements for assessment and monitoring activities;
6. Clarify service coordination provider qualifications and participant eligibility; and
7. Revise references or definitions as needed.

**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 67-5220, Idaho Code, negotiated rulemaking was conducted with Medicaid providers, Case Manager Associations of Idaho, Idaho School Districts, Medicaid staff, advocates and other stakeholders. The negotiated rulemaking published in the March 5, 2008 Idaho Administrative Bulletin, Vol. 08-3, Page 16.



**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David Simnitt at (208) 364-1992.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT FOR DOCKET 16-0310-0801**

**721. SERVICE COORDINATION - DEFINITIONS.**

**01. Agency.** An agency is a business entity that provides service coordination and includes at least ~~a~~ one (1) supervisor who does not carry a case load and a minimum of two (2) service coordinators. ~~(3-19-07)~~( )

**02. Brokerage Model.** Referral or arrangement for services identified in an assessment. This model does not include the provision of direct services. (3-19-07)

**03. Care Plan Assessment.** An assessment conducted by a service coordinator that accurately reflects the status of the participant in terms of the participant's need for assistance in gaining and coordinating access to care and services using person-centered planning principles. ( )

**04. Conflict of Interest.** A situation in which a person's or agency's professional or personal obligations or personal or financial interests appear to directly or indirectly influence the exercise of his official duties. ( )

~~035.~~ **Crisis.** An unanticipated event, circumstance or life situation that places a participant at risk of at least one (1) of the following: (3-19-07)

- a. Hospitalization; (3-19-07)
- b. Loss of housing; (3-19-07)
- c. Loss of employment or major source of income; (3-19-07)
- d. Incarceration; or (3-19-07)
- e. Physical harm to self or others, including family altercation or psychiatric relapse. (3-19-07)

~~04.~~ **Crisis Service Coordination.** *Crisis service coordination services are linking, coordinating and advocacy services provided to assist a participant to access emergency community resources in order to resolve a*

~~crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill building services. (3-19-07)~~

~~05. **Current Assessment.** An assessment that accurately reflects the status of the participant. (3-19-07)~~

06. **Diagnostic Assessment.** A comprehensive assessment of the participant's current condition and complete medical and psychiatric history. Includes a current mental status examination, participant's motivation to engage in treatment, participate in the development of his treatment plan and adhere to his treatment plan, and the five (5) axes diagnoses listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) with recommendations for level of care, intensity, and expected duration of treatment services. ( )

~~07. **High Cost Services.** As used in Subsection 725.01 of these rules, high cost services are medical services that result in expensive claims payment or significant state general fund expenditure that may include: (3-19-07)~~

- a. Emergency room visits or procedures; (3-19-07)
- b. Inpatient medical and psychiatric services; (3-19-07)
- c. Nursing home admission and treatment; (3-19-07)
- d. Institutional care in jail or prison; (3-19-07)
- e. State, local, or county hospital treatment for acute or chronic illness; and (3-19-07)
- f. Outpatient hospital services. (3-19-07)

~~08. **Human Services Field.** A particular area of academic study in public health, social services, education, behavioral science or counseling. (3-19-07)( )~~

09. **Licensed Mental Health Practitioner.** Includes the following mental health professionals who are licensed to diagnose: physician, physician assistant, nurse practitioner trained in psychiatric diagnostics, master level clinical nurse specialist, licensed psychologist, licensed clinical social worker, licensed professional counselor or licensed marriage or family therapist. ( )

~~010. **Paraprofessional.** An adult who has a minimum of a bachelor's degree in a human services field but no experience with participants, or a person without a degree but with a high school diploma or equivalency who has at least twelve (12) months' experience with the population to whom they will be providing services. (3-19-07)~~

11. **Person-Centered Planning.** A process facilitated by the service coordinator and comprised of the participant and individuals significant to the participants, to collaborate to develop a care plan that is based on the expressed needs and desires of the participant. ( )

~~012. **Practitioner of the Healing Arts.** For purposes of this rule, a nurse practitioner, physician assistant or clinical nurse specialist. (3-19-07)~~

~~103. **Service Coordination.** Service coordination is a ~~an~~ case management activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of ~~an~~ the individual. Service coordination is a brokerage model of case management. (3-19-07)( )~~

~~114. **Service Coordinator.** An individual who provides service coordination to a Medicaid eligible participant, is employed by or contracts with a service coordination agency, and meets the training, experience, and other requirements in Section 729 of these rules. (3-19-07)( )~~

~~125. **Supports.** Formal and informal services and activities that are not paid for by the Department and that enable an individual to reside safely in the setting of his choice. (3-19-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

**723. SERVICE COORDINATION - ELIGIBILITY - INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY.**

Individuals with a developmental disability as defined in Section 66-402, Idaho Code and Section 500 through 506 of these rules, are eligible for service coordination if they meet the following requirements in Subsection 723.01 through 723.03 of this rule. (3-19-07)( )

**01. Age.** Are adults eighteen (18) years of age or older, or adolescents fifteen to eighteen (15-18) years of age who are authorized to receive services through the Idaho State School and Hospital (ISSH) waiver; ~~and~~ (3-19-07)( )

**02. Diagnosis.** Are diagnosed with a developmental disability, which means a chronic disability of a person which appears before the age of twenty-two (22) years of age ~~and that is:~~ (3-19-07)( )

**a.** ~~Is a~~Attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; ~~and~~ (3-19-07)( )

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated; ~~and~~ (3-19-07)( )

**03. Need Assistance.** Require and choose assistance to adequately access services and supports necessary to maintain their independence in the community. (3-19-07)

**724. SERVICE COORDINATION - ELIGIBILITY - INDIVIDUALS ~~WHO RECEIVE~~ ELIGIBLE FOR PERSONAL ASSISTANCE SERVICES.**

Individuals ~~who~~ eligible to receive personal assistance services are eligible for service coordination if they ~~meet the following requirements in Subsections 724.01 and 724.02 of this rule.~~ (3-19-07)( )

**01. Personal Care and Wavier Services.** ~~Are a~~Adults ~~or children~~ age eighteen (18) and older, who ~~have been approved~~ are eligible: ( )

**a.** ~~f~~To receive state plan personal care services; or (3-19-07)( )

**~~02~~b. ~~Waiver~~ Services.** ~~Are adults who have been approved~~ ~~f~~To receive Aged and Disabled Home and Community Based Services Waiver; ~~and~~ (3-19-07)( )

**~~03~~2. Need Assistance.** Require and choose assistance to access services and supports necessary to maintain their independence in the community. (3-19-07)

**725. SERVICE COORDINATION - ELIGIBILITY - INDIVIDUALS WITH SEVERE AND PERSISTENT MENTAL ILLNESS.**

Adults ~~with severe and persistent mental illness~~ are eligible for service coordination if they ~~meet the following requirements in Subsections 725.01 through 725.03 of this rule.~~ (3-19-07)( )

**01. Adults Using High Cost Services.** Are eighteen (18) years of age or older and using, or have a history of using, high cost medical services associated with periods of increased severity of mental illness; ~~and~~

(3-19-07)( )

**02. Diagnosis of Mental Illness.** (3-19-07)

**a.** ~~Are diagnosed by a licensed physician or other licensed practitioner of the healing arts (licensed psychologist, licensed clinical social worker, licensed professional counselor, or licensed marriage or family therapist) with a condition of severe and persistent mental illness~~ Have undergone a diagnostic assessment that meets the definition in Section 721 of these rules and are found to have one (1) of the diagnosis that is listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) within one (1) of the following classifications ~~codes:~~ (3-19-07)( )

- i. Schizophrenia and other psychotic disorders; (3-19-07)
- ii. Delirium, dementia, and amnesic disorders; other cognitive disorders; and mental disorders due to a general medical condition; (3-19-07)
- iii. Mood disorders - bipolar and depressive; (3-19-07)
- iv. Schizoid, schizotypal, paranoid or borderline personality disorders; and (3-19-07)

**b.** If the only diagnosis is mental retardation or is a substance related disorder, then the person is not included in the target population for mental health service coordination. (3-19-07)

**c.** Meets the criteria for Severe Mental Illness according to Section 1912(c) of the Public Health Service Act, as amended by Public Law 102-321. ( )

**03. Need Assistance.** Have mental illness of sufficient severity to cause a disturbance in their role performance or coping skills in at least two (2) of the following areas, on either a continuous (more than one (1) year) or an intermittent (at least once per year) basis: (3-19-07)

**a.** Vocational or academic: Is unemployed, unable to work or attend school, is employed in a sheltered setting or supportive work situation, or has markedly limited skills and a poor work history. (3-19-07)

**b.** Financial: Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help, or the person is unable to support himself or manage his finances without assistance. (3-19-07)

**c.** Social and interpersonal: Has difficulty in establishing or maintaining a personal social support system, has become isolated, has no friends or peer group and may have lost or failed to acquire the capacity to pursue recreational or social interests. (3-19-07)

**d.** Family: Is unable to carry out usual roles and functions in a family, such as spouse, parent, or child, or faces gross familial disruption or imminent exclusion from the family. (3-19-07)

**e.** Basic living skills: Requires help in basic living skills, such as hygiene, food preparation, or other activities of daily living, or is gravely disabled and unable to meet daily living requirements. (3-19-07)

**f.** Housing: Has lost or is at risk of losing his current residence. (3-19-07)

**g.** Community: Exhibits inappropriate social behavior or otherwise causes a public disturbance due to poor judgment, bizarre, or intrusive behavior, which may result in intervention by law enforcement, the judicial system, or both. (3-19-07)

**h.** Health: Requires substantial assistance in maintaining physical health or in adhering to medically rigid prescribed treatment regimens. (3-19-07)

**726. SERVICE COORDINATION - ELIGIBILITY - CHILDREN UP TO THE AGE OF TWENTY-ONE.**

To be eligible for children's service coordination ~~under the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT)~~; children must meet the following ~~requirements in Subsections 726.01 through 726.06 of this rule.~~ ~~(3-19-07)(\_\_\_\_\_)~~

- 01. Age.** Children from birth through the month in which their twenty first birthday occurs; ~~and~~ ~~(3-19-07)(\_\_\_\_\_)~~
- 02. Diagnosis.** Must be identified by a physician or other practitioner of the healing arts ~~in an EPSDT screen~~ as having one (1) of the diagnoses found in Subsections 726.03 through 726.05 of ~~these~~ this rules. ~~(3-19-07)(\_\_\_\_\_)~~
- 03. Developmental Delay or Disability.** A physical or mental condition which has a high probability of resulting in developmental delay or disability, or children who meet the definition of developmental disability as defined in Section 66-402, Idaho Code. (3-19-07)
- 04. Special Health Care Needs.** Have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize a disability. (3-19-07)
- 05. Serious Emotional Disturbance (SED).** Have a serious emotional disturbance (SED) with an expected duration of at least one (1) year. The following definition of the SED target populations is based on the definition of SED found in the Children's Mental Health Services Act, Section 16-2403, Idaho Code. (3-19-07)

  - a.** Presence of an emotional or behavioral disorder, according to the DSM-IV-TR or subsequent revisions to the DSM, which results in a serious disability; and (3-19-07)
  - b.** Requires sustained treatment interventions; and (3-19-07)
  - c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (3-19-07)
  - d.** The disorder is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment must be assessed using the Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). Substantial impairment requires ~~a full eight (8) scale score of eighty (80) or higher on the CAFAS or a full seven (7) scale score of eighty (80) or higher on the PECFAS with "moderate" impairment in at least one (1) of the following three (3) scales: that the child scores in the "moderate" impairment range in at least two (2) of the subscales. One (1) of the two (2) must be from the list Subsection 726.05.d.:~~ ~~(3-19-07)(\_\_\_\_\_)~~

    - i.** Self-Harmful Behavior; (3-19-07)
    - ii.** Moods/Emotions; or (3-19-07)
    - iii.** Thinking. (3-19-07)
  - e.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-19-07)
- 06. Need Assistance.** Have one (1) or more of the following problems in Subsection 726.06.a. through 726.06.e. of this rule associated with their diagnosis: ~~(3-19-07)(\_\_\_\_\_)~~

  - a.** The condition has resulted in a level of functioning below normal age level in one (1) or more life areas such as school, family, or community; ~~or~~ ~~(3-19-07)(\_\_\_\_\_)~~
  - b.** The child is at risk of placement in a more restrictive environment or the child is returning from an out of home placement as a result of the condition; ~~or~~ ~~(3-19-07)(\_\_\_\_\_)~~
  - c.** There is danger to the health or safety of the child or the parent is unable to meet the needs of the

child; ~~or~~ (3-19-07)(\_\_\_\_)

d. Further complications may occur as a result of the condition without provision of service coordination services; or (3-19-07)

e. The child requires multiple service providers and treatments. (3-19-07)

**727. SERVICE COORDINATION - COVERAGE AND LIMITATIONS.**

~~Service coordination consists of the following functions:~~ Service coordination consists of services provided to assist individuals in gaining access to needed medical, social, educational, and other services. Service coordination includes the following activities described in Subsections 727.01 through 727.10 of this rule. (3-19-07)(\_\_\_\_)

**01. ~~Linking the Participant to Needed Services.~~ "Linking" includes: Comprehensive Care Plan Assessment and Periodic Reassessment. Activities that are required to determine the participant's needs by development of a comprehensive care plan assessment and periodic reassessment as described in Section 730 of these rules. These activities include:** (3-19-07)(\_\_\_\_)

~~a. Finding, arranging and assisting the participant to maintain services, supports, and community resources identified on the service plan; and Taking client history;~~ (3-19-07)(\_\_\_\_)

~~b. Advocating for the unmet needs of the participant and to encourage independence. Identifying the individual's needs and completing related documentation; and~~ (3-19-07)(\_\_\_\_)

~~c. Gathering information from other sources such as family members, medical providers, social workers, and educators, to form a complete assessment of the individual.~~ (\_\_\_\_)

**02. ~~Monitoring and Coordination of Services.~~ ~~Monitoring and coordinating services includes:~~ Development of a Care Plan. Development and revision of a specific care plan as described in Section 731 of these rules and includes information collected through the comprehensive assessment and specifies goals and actions to address medical, social, educational, and other services needed by the participant. The care plan must be updated at least annually and as needed to meet the needs of the participant. (3-19-07)(\_\_\_\_)**

~~a. Assisting the participant and his family or guardian to coordinate and retain services, and assure consistency and non-duplication between services; and~~ (3-19-07)

~~b. Assuring that services are satisfactory to the participant and making adjustments in the plan of service when needed.~~ (3-19-07)

**03. Assessment. Assessment for service coordination includes evaluation of the participant's ability to gain access to needed services; coordinate or maintain those services; and identify the services and supports the participant needs to maintain his highest level of independence in the community. The assessment is an interactive process with maximum feasible involvement of the participant. Referral and Related Activities. Activities that help link the participant with medical, social, educational providers or other programs and services. This includes making referrals to providers when an assessment indicates the need for medical, psychiatric, social, educational, or other services, and referral or arrangement for such services.** (3-19-07)(\_\_\_\_)

~~a. Assessment Content for Developmental Disability. A person with a developmental disability is assessed through the developmental disability eligibility criteria identified in Section 66-402, Idaho Code. The need for assistance, as defined in Sections 723 through 726 of these rules, must be determined through the person centered planning process as defined in IDAPA 16.04.11, "Developmental Disabilities Agencies," Section 011.~~ (3-19-07)

~~b. Assessment Content for Personal Assistance Services. A comprehensive evaluation of the participant's ability to function in the community including:~~ (3-19-07)

~~i. Medical needs, physical problems and strengths;~~ (3-19-07)

~~ii. Mental and emotional problems and strengths;~~ (3-19-07)

- ~~iii. Physical living environment; (3-19-07)~~
- ~~iv. Vocational and educational needs; (3-19-07)~~
- ~~v. Financial and social needs; (3-19-07)~~
- ~~others; vi. Evaluation of the community support system including the involvement of family or significant others; (3-19-07)~~
- ~~vii. Safety and risk factors; and (3-19-07)~~
- ~~viii. Legal status. (3-19-07)~~
- ~~e. Assessment Content for Mental Health. The assessment must focus on the following areas: (3-19-07)~~
  - ~~i. Mental status (psychiatric status for individuals with mental illness); (3-19-07)~~
  - ~~ii. Medical history and needs; (3-19-07)~~
  - ~~iii. Vocational status and needs; (3-19-07)~~
  - ~~iv. Financial status and needs; (3-19-07)~~
  - ~~v. Social relationships and supports; (3-19-07)~~
  - ~~vi. Family status and supports; (3-19-07)~~
  - ~~vii. Basic living skills and needs; (3-19-07)~~
  - ~~viii. Housing status and needs; and (3-19-07)~~
  - ~~ix. Community and legal status and needs. (3-19-07)~~
- ~~d. EPSDT Assessment. The assessment for EPSDT Service Coordination services is completed by the Department. (3-19-07)~~

**04. Crisis Assistance. Monitoring and Follow-Up Activities.** Monitoring and follow-up contacts that are necessary to ensure the care plan is implemented and adequately addresses the participant's needs. These activities may be with the participant, family members, providers, or other entities or individuals and conducted as frequently as necessary. These activities must include at least one face-to-face contact with the participant at least every ninety (90) days, to determine whether the following conditions are met: (3-19-07)(\_\_\_\_)

**a. Crisis Assistance.** Crisis assistance, including services to prevent hospitalization or incarceration, may be provided before the completion of assessment and development of a plan of service. Services are being provided according to the participant's care plan; (3-19-07)(\_\_\_\_)

**b. Crisis Assistance for Children Receiving EPSDT Service Coordination.** Additional crisis hours may be authorized for service coordination for children receiving EPSDT service coordination if at least four (4) hours of service coordination have already been provided in the month. Services in the care plan are adequate; and (3-19-07)(\_\_\_\_)

**c. Crisis Assistance for Adults With a Developmental Disability.** Crisis assistance for adults with a developmental disability may be authorized under community crisis supports as found in Section 507 through 515 of these rules. Whether there are changes in the needs or status of the participant, and if so, making necessary adjustments in the care plan and service arrangements with providers. (3-19-07)(\_\_\_\_)

~~d. Crisis Assistance for Adults With Severe and Persistent Mental Illness. Crisis assistance may be delivered prior to, or after, the completion of the assessment and individual service plan. Without authorization by the Department crisis assistance is limited to a total of three (3) hours per calendar month. The Department may authorize additional crisis case management services beyond the three (3) hour limit if a participant still has severe or prolonged crisis case management needs that meet all of the following criteria: (3-19-07)~~

~~i. The service participant is at imminent risk within fourteen (14) days of hospitalization or institutionalization, including jail or nursing home; and (3-19-07)~~

~~ii. The service participant is experiencing symptoms of psychiatric decompensation; and (3-19-07)~~

~~iii. The service participant has already received the maximum number of monthly hours of ongoing case management and crisis case management services; and (3-19-07)~~

~~iv. No other crisis assistance services are available to the participant under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). (3-19-07)~~

~~e. Crisis Assistance for Individuals Who Receive Personal Assistance Services. Additional hours for crisis assistance may be authorized for individuals who receive personal assistance services, if at least eight (8) hours of service coordination have already been provided in the month. (3-19-07)~~

**05. Limitations on the Provision of Direct Services. Providers of service coordination services may not provide both service coordination and direct service to the same Medicaid participant except for the following: Crisis Assistance. Crisis assistance, including services to prevent hospitalization or incarceration. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. The need for all crisis assistance hours must meet the definition of crisis in Section 721 of these rules. (3-19-07)( )**

**a. Early and Periodic Screening Diagnosis and Treatment (EPSDT). Providers of service coordination to children under the EPSDT option; or Crisis Assistance for Children's Service Coordination. Crisis hours are not available until at least four and a half (4.5) hours of service coordination have already been provided in the month. Crisis hours for children's service coordination must be prior authorized by the Department. (3-19-07)( )**

**b. Adults With Severe and Persistent Mental Illness. Providers of service coordination to adults with severe and persistent mental illness. Crisis Assistance for Adults With a Developmental Disability. Crisis hours are not available until at least four and a half (4.5) hours of service coordination have already been provided in the month. Crisis assistance for adults with a developmental disability must be prior authorized by the Department and is based on community crisis supports as found in Section 507 through 515 of these rules. (3-19-07)( )**

**c. Crisis Assistance for Adults with Severe and Persistent Mental Illness. Initial crisis assistance is limited to a total of three (3) hours per calendar month. Additional crisis service coordination services must be prior authorized by the Department and may be requested when the participant meets all of the following criteria: ( )**

**i. The participant is at imminent risk of reinstitutionalization within fourteen (14) days following discharge from a hospital or institution, including jail or nursing home; ( )**

**ii. The participant is experiencing symptoms of psychiatric decompensation that interferes or prohibits the participant from gaining or coordinating necessary services; ( )**

**iii. The participant has already received the maximum number of monthly hours of ongoing service coordination and crisis service coordination hours; and ( )**

**iv. No other crisis assistance services are available to the participant under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). ( )**



d. Crisis Assistance for Individuals Eligible for Personal Assistance Services. Crisis hours are not available until at least eight (8) hours of service coordination have already been provided in the month. Crisis hours must be prior authorized by the Department. ( )

06. ~~Limitations on Service Coordination.~~ ~~When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as service coordination services. Service coordination is limited to the following:~~ Contacts for Assistance. Service coordination may include contacts with non-eligible individuals only when the contact is directly related to identifying the needs and supports for helping the eligible participant to access services. (3-19-07)( )

a. ~~Service Coordination for Persons With Mental Illness. Five (5) hours per month for participants with mental illness.~~ (3-19-07)

b. ~~Service Coordination for Personal Assistance Services. Up to eight (8) hours per month for participants who have been approved to receive personal assistance services, as prior authorized by the Department.~~ (3-19-07)

c. ~~Other Populations. Service coordination services to participants with developmental disabilities and children under the EPSDT option are prior authorized by the Department on a monthly basis.~~ (3-19-07)

d. ~~Assessment and Plan Development. Assessment and plan development are reimbursable except for the initial plan development for EPSDT service coordination.~~ (3-19-07)

e. ~~Initial Plan Development. Reimbursement for the initial evaluation and individual service plan development will be paid based on an hourly rate, not to exceed six (6) hours.~~ (3-19-07)

07. Exclusions. Service coordination does not include activities that are: ( )

a. An integral component of another covered Medicaid service; ( )

b. Integral to the administration of foster care programs; ( )

c. Integral to the administration of another non-medical program for which a participant may be eligible, except for service coordination that is included in an individualized education program, or individualized family service plan consistent with Section 1903(c) of the Social Security Act. ( )

08. Limitations on the Provision of Direct Services. Providers of service coordination services may only provide both service coordination and direct services to the same Medicaid participant when the participant is receiving either children's service coordination or service coordination for adults with mental illness and the service coordinator has documented that the participant has made free choice of providers. ( )

09. Limitations on Service Coordination. Service coordination is limited to the following: ( )

a. Service Coordination for Persons with Mental Illness. Up to five (5) hours per month of ongoing service coordination for participants with mental illness. ( )

b. Service Coordination for Personal Assistance Services. Up to eight (8) hours per month for participants who are eligible to receive personal assistance services. ( )

c. Service Coordination for Children. Up to four and a half (4.5) hours per month for participants who meet the eligibility qualifications for Children's Service Coordination. ( )

d. Service Coordination for Adults with a Developmental Disability. Up to four and a half (4.5) hours per month for participants with developmental disabilities. ( )

10. Limitations on Care Plan Assessment and Care Plan Development. Reimbursement for the assessment and care plan development cannot exceed six (6) hours for children, participants with mental illness, or

eligible adult personal assistance participants. Plan development for participants with developmental disabilities cannot exceed twelve (12) hours. ( )

**728. SERVICE COORDINATION - PROCEDURAL REQUIREMENTS.**

**01. Prior Authorization for Service Coordination Services.** All service coordination services must be prior authorized by the Department, except the following adult mental health service coordination services: initial assessment for services; five (5) hours of ongoing service coordination per month; and the first three (3) hours of crisis service coordination per month. For adults with mental illness, crisis service coordination over three (3) hours per month must be prior authorized. (3-19-07)

**02. Service Coordination Care Plan Development.** A written ~~service coordination care plan~~, as described in Section 731 of these rules, must be developed and implemented within sixty (60) days after the participant chooses a service coordination agency except in the case of adults with severe and persistent mental illness; in which case the time limit is thirty (30) days. The plan must be updated at least annually. The plan must address the service coordination needs of the participant as identified in the care plan assessment described in Section 730 of these rules. (3-19-07)( )

~~a. Service Plan Content for Individuals With Developmental Disabilities. The service coordination plan for individuals with developmental disabilities is incorporated into the participant's plan of service. The content is identified in Section 512 of these rules. (3-19-07)~~

~~b. Service Plan Content for Individuals Receiving Personal Assistance Services. The individual's service plan must contain at least the following: (3-19-07)~~

~~i. Problems identified during the assessment; (3-19-07)~~

~~ii. Overall goals to be achieved; (3-19-07)~~

~~iii. Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the service coordinator to develop the support system; (3-19-07)~~

~~iv. Documentation of who has been involved in the service planning, including the participant's involvement; (3-19-07)~~

~~v. Schedules for service coordination monitoring and reassessment; (3-19-07)~~

~~vi. Documentation of unmet needs and service gaps; and (3-19-07)~~

~~vii. References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery. (3-19-07)~~

~~e. Service Plan Content for Individuals With Severe And Persistent Mental Illness. The service coordination plan must include the following: (3-19-07)~~

~~i. A list of problems and needs identified during the assessment; (3-19-07)~~

~~ii. Concrete measurable goals and objectives to be achieved by the service coordinator; (3-19-07)~~

~~iii. Time frames for achievement of the goals and objectives; (3-19-07)~~

~~iv. Reference to any formal services arranged including specific providers; (3-19-07)~~

~~v. Frequency of services initiated; and (3-19-07)~~

~~vi. Documentation of who was involved in the service planning. (3-19-07)~~

~~d.~~ *Service Plan Development for EPSDT Service Coordination. The initial plan for EPSDT service coordination is completed by the Department or designee. An EPSDT service coordination, agency selected by the family develops an annual service coordination plan and submits it to the Department for prior authorization of continued service coordination.* (3-19-07)

**03. Documentation of Service Coordination.** Agencies must maintain records that contain documentation describing the services provided, review of the continued need for service coordination, and progress toward each service coordination goal. Documentation must be completed as required in Section 56-209(h), Idaho Code. All active records must be immediately available. Documentation must include all of the following: (3-19-07)

- a. *Name:* The name of the eligible participant. (3-19-07)( )
- b. *Provider:* The name of the provider agency and the person providing the ~~direct~~ services. (3-19-07)( )
- c. *Time and Place of Service:* The date, time, duration, and place the service was provided. (3-19-07)( )
- d. The nature, content, units of the service coordination received and whether goals specified in the care plan have been achieved. ( )
- e. Whether the participant declined any services in the care plan. ( )
- f. The need for and occurrences of coordination with other case managers. ( )
- g. The timeline for obtaining needed services. ( )
- h. The timeline for re-evaluation of the plan. ( )
- ~~di.~~ *Documentation of Eligibility:* A copy of the ~~current~~ assessment or prior authorization from the Department that documents eligibility for service coordination services, and a dated and signed ~~service care~~ plan. (3-19-07)( )
- ~~ej.~~ *Description:* Agency records must contain documentation describing details of the service provided signed by the person who delivered the service. (3-19-07)( )
- ~~fk.~~ *Progress Review:* ~~Documented R~~review of participant's continued need for service coordination and progress toward each service coordination goal. A review must be completed at least every one hundred eighty (180) days after the plan development or update. Progress reviews must include the date of the review, and the signature of the service coordinator completing the review. (3-19-07)( )
- ~~gl.~~ *Satisfaction With Service:* Documentation of the participant's, family's, or guardian's satisfaction with service. (3-19-07)( )
- ~~hm.~~ *Informed Consent:* A copy of the informed consent form signed by the participant or guardian which documents that the participant has been informed of the purposes of service coordination, his rights to refuse service coordination and his right to choose his providers. (3-19-07)( )
- ~~in.~~ *Service Plan:* A service care plan that is signed by the participant or his legal representative, and the plan developer service coordinator. Mental health service coordination care plans must also be signed by a physician or ~~other~~ licensed mental health practitioner ~~of the healing arts~~. The care plan must reflect person-centered planning principles and document the participant's inclusion in the development of the plan. The service coordinator must also document that a copy of the plan was given to the participant or his legal representative. The plan must be updated and authorized when required, but at least annually. Children's service coordination care plans cannot be effective before the date that the child's parent or legal guardian has signed the plan. (3-19-07)( )

**j04. Documentation of Crisis Assistance ~~Documentation~~ for Adults With Severe and Persistent**

**Mental Illness.** Documentation to support authorization of crisis assistance beyond the monthly limitation must be submitted to the Department before such authorization may be granted. The crisis situation and the crisis service coordination services must be documented in the progress notes of the participant's medical record. Documentation to support delivery of crisis assistance must also be maintained in the participant's agency record and must include: (3-19-07)(\_\_\_\_)

**ia.** A description of the crisis, including identification of unanticipated events that precipitate the need for crisis ~~ease management~~ service coordination services; (3-19-07)(\_\_\_\_)

**ib.** A brief review of ~~ease management~~ service coordination and other services or supports available to, or already provided to, the participant to resolve the crisis; (3-19-07)(\_\_\_\_)

**ic.** A crisis resolution plan; and (3-19-07)

**id.** Outcomes of crisis assistance service provision. (3-19-07)

**05. Documentation Completed by a Paraprofessional.** Each entry completed by a paraprofessional must be reviewed by the participant's service coordinator and include the date of review and the service coordinator's signature on the documentation. (\_\_\_\_)

**046. Participant Freedom of Choice of Service Coordination Providers.** ~~Eligible~~ A participant's ~~must~~ have ~~the option to~~ freedom of choice when selecting a service coordination provider agency and service coordinators. ~~A participant must have free choice of a service coordination provider.~~ The service coordinator cannot restrict the participant's choice of other health care providers. (3-19-07)(\_\_\_\_)

**057. Service Coordinator Contact and Availability.** ~~At least every thirty (30) days, service coordinators must have contact with the participant, legal guardian or provider who can verify the participant's well being and whether services are being provided according to the written plan.~~ The frequency of contact, mode of contact, and person being to be contacted must be identified in the plan and must meet the needs of the participant. The contacts must verify the participant's well being and whether services are being provided according to the written plan. At least every ninety (90) days, the service coordinator must have a face-to-face contact with the participant except as described in Subsection 728.07.a. of this rule. (3-19-07)(\_\_\_\_)

~~**a.** The mode and frequency of contact for developmental disability service coordination must be identified in the plan and must meet the needs of the participant. Service coordinators must have face-to-face contact with each participant at least every ninety (90) days.~~ (3-19-07)

~~**ba.** The mode and frequency of contact for mental health service coordination must be identified in the plan and must meet the needs of the participant.~~ Mental health service coordinators must have face-to-face contact every month with each participant. (3-19-07)(\_\_\_\_)

~~**eb.** The mode and frequency of contact for Early and Periodic Screening and Diagnosis and Treatment (EPSDT) service coordination must be identified in the plan and must meet the needs of the child.~~ EPSDT When it is necessary for the children's service coordinators must have to conduct a face-to-face contact with the a child and the child's family at least every ninety (90) days participant without the legal guardian present, the service coordinator must notify the legal guardian prior to the face-to-face contact with the participant. Notification must be documented in the participant's file. (3-19-07)(\_\_\_\_)

~~**d.** The mode and frequency of contact for Personal Care Service (PCS) service coordination must be identified in the plan and must meet the needs of the participant. PCS service coordinators must have face to face contact with the participant and others at least every ninety (90) days as necessary to coordinate and monitor the progress of the existing individual service plan.~~ (3-19-07)

**ec. Hours of Availability.** Service coordinators do not have to be available on a twenty-four (24) hour basis, but must include an individualized objective on the care plan describing what the participant, families, and providers should do in an emergency situation. The individualized objective must include how the service coordinator will follow up on an emergency situation. (3-19-07)(\_\_\_\_)

**08. Service Coordinator Responsibility Related to Conflict of Interest.** Service coordinators have a primary responsibility to the participant whom they serve, to respect and promote the right of the participant to self-determination, and preserve the participant's freedom to choose services and providers. In order to assure that participant rights are being addressed, service coordinators must: ( )

**a.** Be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. ( )

**b.** Inform participant and guardian when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the participant's interests primary and protects the participant's interests to the greatest extent possible. ( )

**09. Agency Responsibility Related to Conflict of Interest.** To assure that participants are protected from restrictions to their self-determination rights because of conflict of interest, the agency must guard against conflict of interest, and inform all participants and guardians of the risk. Each agency must have a document in each participant's file that contains the following information: ( )

**a.** The definition of conflict of interest as defined in Section 721 of these rules; ( )

**b.** A signed statement by the agency representative verifying that the concept of conflict of interest was reviewed and explained to the participant or guardian to preserve the participant's freedom to choose services and providers; and ( )

**c.** The participant's or guardian's signature on the document. ( )

**729. SERVICE COORDINATION - PROVIDER QUALIFICATIONS.**

Services ~~will~~ coordination services must be provided by an ~~organized provider~~ agency ~~that has entered into a provider agreement with the Department~~ as defined in Section 721 of these rules. (3-19-07)( )

**01. Provider Agreements.** Service coordinators must be employees or contractors of an agency that has a valid provider agreement with the Department. (3-19-07)

**02. Work Experience and Supervision.** ~~All service coordinators must have at least twelve (12) months' experience working with the population they will be serving or be supervised by a qualified service coordinator. The agency must provide supervision to all service coordinators and paraprofessionals. The supervision structure must clearly:~~ (3-19-07)( )

**a.** Demonstrate each supervisor's ability to legitimately address concerns about the services provided by employees under their supervision. ( )

**b.** Require that the supervisor is not supervised by someone under their supervision, directly or indirectly. ( )

**c.** Require that there be at least one (1) supervisor who does not carry a service coordination caseload. ( )

**d.** Require that a paraprofessional is not a supervisor. ( )

**03. Minimum Education Requirements.** ~~All service coordinators must have a minimum of a bachelor's degree in a human services field from a nationally accredited university or college; or be a licensed professional nurse, also referred to as a registered nurse (RN).~~ **Agency Supervisor Required Education and Experience.** (3-19-07)( )

**a.** Master's Degree in a human service field and twelve (12) months experience with the population being served; or ( )

**b.** Bachelor's degree in human services fields or RN degree and twenty-four (24) months experience with the population being served. ( )

**c.** For mental health service coordination, the supervisor must have obtained the required experience in a mental health treatment setting with the serious and persistent mentally ill population. ( )

**04. Service Coordinator Education and Experience.** ( )

**a.** Minimum of a Bachelor's degree in human services field from a nationally accredited university or college and; ( )

**b.** Twelve (12) months experience working with the population to whom the service coordinator will be providing service; or ( )

**c.** Be a licensed professional nurse (RN) with twelve (12) months experience working with the population to whom the service coordinator will be providing service. ( )

**05. Paraprofessional Education and Experience.** Under the supervision of a qualified service coordinator, a paraprofessional may be used to assist in the implementation of the care plan. Paraprofessionals must have the following qualifications: ( )

**a.** Be at least eighteen (18) years of age, have a minimum of a high school diploma or equivalency; ( )

**b.** Be able to read and write at a level with the paperwork and forms involved in the provision of the service; and ( )

**c.** Have twelve (12) months experience with the population to whom the paraprofessional will be providing services; or ( )

**d.** Have a bachelor's degree in a human services field, but no experience with the population. ( )

**06. Limitations on Services Delivered by Paraprofessionals.** Paraprofessionals must not work with participants who receive mental health service coordination. Paraprofessionals must not conduct assessments, evaluations, person-centered planning meetings, one hundred eighty (180) day progress reviews, plan development or addenda development. Paraprofessionals cannot be identified as the service coordinator on the plan and they cannot supervise service coordinators or other paraprofessionals. ( )

**047. Mandatory Criminal History Check Requirements.** Service coordination agencies must verify that each service coordinator and paraprofessional they employ or with whom they contract has complied with IDAPA 16.05.06, "Criminal History and Background Checks." (3-19-07)( )

**058. Health, Safety and Fraud Reporting.** Service coordinators are required to report any concerns about health and safety to the appropriate governing agency and to the Department. Service coordinators must also report fraud, including billing of services that were not provided, to the Department unit responsible for authorizing the service; and to the Surveillance and Utilization Review Unit (SUR) within the Department or its toll-free Medicaid fraud hotline. (3-19-07)

**09. Individual Service Coordinator Case Loads.** The total caseload of a service coordinator must assure quality service delivery and participant satisfaction. ( )

**730. SERVICE COORDINATION - PARAPROFESSIONALS CARE PLAN ASSESSMENT.**  
*Under the supervision of a qualified service coordinator, paraprofessionals may be used to assist in the implementation of a service coordination plan except for plans of participants with a mental illness. Paraprofessionals must be able to read and write at a level equal with the paperwork and forms involved in the provision of service.* (3-19-07)

**01. Care Plan Assessment.** The service coordination care plan assessment must be completed by a service coordinator as part of the person-centered planning. During the care plan assessment the participant must be present, and guardian when appropriate, and pertinent service providers as identified by the participant. The assessment is used to determine the prioritized needs and services of the participant and must be documented in the care plan. The assessment must focus on the participant's needs, and when the participant is a child, include the family's needs to ensure the child's needs are met. ( )

**02. Assessment Forms.** The care plan assessment must be on Department approved forms and include the following information: ( )

- a. Basic needs: ( )
- b. Medical needs: ( )
- c. Health and safety needs: ( )
- d. Therapy needs: ( )
- e. Educational needs: ( )
- f. Social and integration needs: ( )
- g. Personal needs: ( )
- h. Family needs and supports: ( )
- i. Long range planning: ( )
- j. Legal needs: ( )
- k. Financial needs; and ( )

**l.** For individuals with mental illness the diagnostic assessment exam results as described in Subsection 725.02 of these rules. ( )

**03. Service Coordination Care Plan Assessment for Mental Health.** The care plan assessment for mental health must not duplicate the diagnostic assessment defined in Section 721 of these rules. The focus of the care plan assessment must meet the participant's need for assistance in gaining and coordinating access to care and services listed in Subsection 730.02. of this rule. ( )

**731. SERVICE COORDINATION - ~~SUPERVISION OF SERVICE COORDINATION CARE PLAN.~~**  
~~Service coordination agencies must provide supervision to qualified service coordinators and paraprofessionals employed by the agency. Agency supervisors must have the following qualifications:~~ The service coordination care plan is developed using information collected through the care plan assessment of the participant's service coordination needs. The care plan must specify the goals and actions to address the medical, social, educational, and other services needed by the participant. The care plan must include activities ensuring the active participation of the eligible participant, and working with the participant or the participant's authorized health care decision maker and others to develop those goals. (3-19-07)( )

**01. Master's Degree.** Master's degree in a human services field and one (1) year's experience with the population for whom they will be supervising services. For supervisors of service coordination for participants with mental illness, this experience must be in a mental health service setting; or **Course of Action.** The care plan must identify a course of action to respond to the assessed needs of the participant. (3-19-07)( )

**02. Bachelor's Degree.** Bachelor's degree in a human services field or RN degree and two (2) years' experience with the population for whom they will be supervising services. For supervisors of service coordination to participants with mental illness, this experience must be in a mental health service setting. **Service Coordination**

**Care Plan Content.** Care plans must include the following: (3-19-07)( )

- a. A list of problems and needs identified during the assessment; ( )
- b. A crisis prevention plan is a part of the care plan developed in conjunction with the participant and providers that identifies each and any potential risk anticipated for a specific participant, or otherwise substantiates that there are no potential risks. The crisis prevention plan must identify services and actions which will be implemented in cases of a participant crisis situation. ( )
- c. Concrete, measurable goals and objectives to be achieved by the participant; ( )
- d. Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the service coordinator to develop the support system; ( )
- e. Documentation of who has been involved in the service planning, including the participant's involvement; ( )
- f. Schedules for service coordination monitoring, progress review, and reassessment; ( )
- g. Documentation of unmet needs and service gaps including goals to address these needs or gaps; ( )
- h. References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery; and ( )
- i. Time frames for achievement of the goals and objectives; ( )

**03. Adult Developmental Disability Service Coordination Care Plan.** The care plan for adults with developmental disabilities must be incorporated into the participant's developmental disability plan of service as identified in Section 513 of these rules. ( )

~~732. SERVICE COORDINATION – INDIVIDUAL SERVICE COORDINATOR CASE LOADS.~~  
~~The total caseload of a service coordinator must assure quality service delivery and participant satisfaction.~~ (3-19-07)

~~733. -- 735. (RESERVED).~~

**736. SERVICE COORDINATION - PROVIDER REIMBURSEMENT.**

~~01. Limitations on Payment for Service Coordination.~~ (3-19-07)

~~01.~~ **01. Duplication.** Participants are only eligible for one (1) type of service coordination. If they qualify for more than one (1) type, the participant must choose one (1). Service coordination payment must not duplicate payment made to public or private sector entities under other program authorities for this same purpose. (3-19-07)

~~02.~~ **02. Payment for Service Coordination.** Subject to the service limitations in Subsection 736.01.F06 of this rule, only the following services are reimbursable: (3-19-07)( )

~~ia.~~ **ia.** Face-to-face contact as required in Subsection 728.057 of these rules. (3-19-07)( )

~~ib.~~ **ib.** Telephone contact between the service coordinator and the participant, participant's service providers, family members, primary care givers, legal representative, or other interested persons; ~~or~~ (3-19-07)( )

~~ic.~~ **ic.** Face-to-face contact between the service coordinator and the participant's family members, legal representative, primary caregivers, providers, or other interested persons. (3-19-07)

~~id.~~ **id.** Paperwork that is associated with obtaining certain needed services such as food stamps, energy



assistance, emergency housing, or legal services.

(3-19-07)

**e03. Service Coordination During Institutionalization.** Service coordination is reimbursable on the day a participant is admitted to a medical institution if the service is provided prior to admission. Service coordination is reimbursable on the day of discharge from a medical institution if the service is provided after discharge. Service coordination may be provided: *during the last thirty (30) days of an inpatient stay, or if the stay is not expected to last longer than thirty (30) days, when the service does not duplicate the discharge responsibilities of the facility.*

(3-19-07)( )

**a.** During the last fourteen (14) days of an inpatient stay which is less than one hundred eighty (180) days in duration: ( )

**b.** During the last sixty (60) days of an inpatient stay of one hundred eighty (180) days or more: ( )

**c.** Service coordination providers may not file claims for reimbursement until the participant is discharged and enrolled in community services: ( )

**d.** Service coordination must not duplicate activities provided as part of initiation services and discharge planning activities: ( )

**e.** Service coordination must only be provided by and reimbursed to community service coordination providers. ( )

**f.** The plan of care must include documentation of service coordination services provided prior to and post discharge to facilitate a successful transition into the community. ( )

**#04. Incarceration.** Service coordination is not reimbursable when the participant is incarcerated. (3-19-07)

**e05. Services Delivered Prior to Assessment.** Payment for on-going service coordination will not be made prior to the completion of the assessment and ~~service~~ care plan. (3-19-07)( )

**#06. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments with the Medicaid service coordinator, transporting participants, or documenting services. *For service coordination paid at an hourly rate, providers will not be reimbursed for more than one (1) contact during a single fifteen (15) minute time period.*

(3-19-07)( )

**a.** Service coordination providers are paid in unit increments of fifteen (15) minutes each. ( )

**b.** Direct delivery of medical, educational, social, or other service to which a participant has been referred is not reimbursable as service coordination. ( )

**c.** Activities that are an integral component of another covered Medicaid service are not reimbursable as service coordination. ( )

**d.** Activities that are integral to the administration of foster care programs are not reimbursable as service coordination. ( )

**e.** Except for service coordination that is included in an individualized education program, or individualized family service plan consistent with Section 1903(c) of the Social Security Act, activities that a participant is eligible for under another non-medical program are not reimbursable as service coordination. ( )

**027. Healthy Connections.** If the participant is enrolled in Healthy Connections, the referral for assessment and provision of services must be *authorized by a physician or other practitioner of the healing arts, except for participants who receive personal care services or aged and disabled waiver services* from the

participant's Healthy Connections provider, except for participants who receive personal care services or aged and disabled waiver services. The dates and duration of the Healthy Connections referral must cover the dates of service coordination to be eligible for reimbursement. (3-19-07)(\_\_\_\_)

**038. Group Service Coordination.** Payment is not allowed for service coordination provided to a group of participants. (3-19-07)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-0802**

**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 56-102, 56-135, and 56-202(b), Idaho Code.

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

**WEDNESDAY - OCTOBER 8, 2008 - 2:00 pm**

**DEPARTMENT OF HEALTH & WELFARE  
Medicaid Office - Conference Room D-East  
3232 Elder Street, Boise, 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:

These rules are being amended to clarify how reimbursement rates for nursing facilities are calculated so that providers can effectively manage their facilities. Language regarding specific dates are being removed to refer to the rate base year. The factors for determining a distressed facility are being clarified to provide for an annual review, prospective application, and a determination on a facility-by-facility basis.

**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 67-5220, Idaho Code, negotiated rulemaking was conducted with Medicaid providers, Idaho Health Care Association, Medicaid staff, and other stakeholders.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Eric Anderson at (208) 364-1918.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET 16-0310-0802

**257. NURSING FACILITY - DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and ~~rebased~~ are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09 of ~~these~~ this rules. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. (3-19-07)(      )

**01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

**i.** If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

**ii.** If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

**06. Efficiency Incentive.** The efficiency incentive is available to those providers, both free-standing

and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by seventy percent (70%). There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. (3-19-07)

**07. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

**08. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

**09. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

**258. NURSING FACILITY - COST LIMITS BASED ON COST REPORT.**

~~Effective July 1, 1999, and e~~Each July 1st ~~thereafter~~, cost limitations will be established for nursing facilities based on the most recent audited cost report with an end date of June 30th of the previous year or before. Calculated limitations will be effective for a one (1) year period, from July 1 through June 30th of each year, which is the rate year. (3-19-07)(\_\_\_\_\_)

**01. Percentage Above Bed-Weighted Median.** Prior to establishing the first "shadow rates" at July 1, 1999, the estimated Medicaid payments under the previous retrospective system for the year period from July 1, 1999, through June 30, 2000, will be calculated. This amount will then be used to model the estimated payments under the case mix system set forth in Sections 255 through 257 of these rules. The percentages above the bed-weighted median, for direct and indirect costs, will be established at a level that approximates the same amount of Medicaid expenditures as would have been produced by the retrospective system. The percentages will also be established to approximate the same distribution of total Medicaid dollars between the hospital-based and freestanding nursing facilities as existed under the retrospective system. Once the percentage is established, it will be used to calculate the limit by multiplying the bed-weighted median per diem direct cost times the calculated percentage for that class of provider. There will be a direct and indirect percentage that is applied to freestanding and urban hospital-based nursing facilities, and a higher direct and indirect percentage that is applied to rural hospital-based nursing facilities. Once established, these percentages will remain in effect for future rate setting periods. (3-19-07)

**02. Direct Cost Limits.** The direct cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be normalized and arrayed from high to low, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

**03. Indirect Cost Limits.** The indirect cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be arrayed, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

**04. Limitation on Increase or Decrease of Cost Limits.** Increases in the direct and indirect cost limits will be determined by the limitations calculated ~~effective July 1, 1999~~ in the most recent base year, indexed forward each year from the midpoint of the base year to the midpoint of the rate year by the inflation factor plus two percent (2%) per annum. ~~Furthermore, the~~ calculated direct and indirect cost limits will not be allowed to decrease below the ~~established~~ limitations effective ~~July 1, 1999~~ in the base year. The maximum rate of growth on the cost limits, and the minimum cost limitation, will be examined by the oversight committee ~~after a three-year periodically~~ to determine which factors to use in the calculation of the limitations effective July 1, 2002 in the new base year and forward. (3-19-07)(\_\_\_\_\_)

**05. Costs Exempt From Limitations.** Costs exempt from limitations include property taxes, property insurance, and utilities. These costs will be reimbursed on a per diem basis and will not be included in the calculation

of the direct or indirect care component. However, property taxes and property insurance will be subject to minimum occupancy levels as defined in Section 278 of these rules. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

**261. NURSING FACILITY - TREATMENT OF A CHANGE IN OWNERSHIP.**

New providers resulting from a change in ownership of an existing facility will receive the previous owner's rate until such time as the new owner has a cost report which qualifies for the rate setting criteria established under these rules. If the Department determines that such a facility is operationally or financially unstable, the Department may negotiate a reimbursement rate different than the rate then in effect for the facility. (3-19-07)( )

(BREAK IN CONTINUITY OF SECTIONS)

**263. NURSING FACILITY - DISTRESSED FACILITY.**

**01. Determination.** If the Department determines that a facility ~~is operationally or financially unstable~~, is located in an under-served area, or addresses an under-served need, the Department may negotiate a reimbursement rate different than the rate then in effect for that facility. (3-19-07)( )

**02. Discretionary Factors.** The fact that a facility may be located in an under-served area or meets an under-served need does not guarantee increased reimbursement. In exercising its discretion to apply a higher rate, the Department will consider the factors as described in Subsections 263.02.a. through 263.02.e. of this rule. ( )

**a. Prudent Spending Patterns.** The facility has exercised prudent spending and cost allocation practices, as evidenced by a thorough and comprehensive review of the facility's accounts by the Department. ( )

**b. Reasonable Attempts to Remedy Problems.** The facility must persuade the Department that it has conscientiously and diligently attempted to cover its costs of care, hire qualified staff and otherwise operate effectively and efficiently, but for causes beyond the facility's reasonable control, it has not been able to do so. ( )

**c. Facility Already Receives Special Rates.** When a facility already receives special rates for certain difficulty-of-care patients from the Department, the same costs of care that were used to determine special rates will not be applied toward a determination of distressed facility status, because the special rate meets that need. ( )

**d. Direct and Indirect Costs of Care Apportioned to Patient Care.** The Department reimburses the costs of patient care, and does not pay for indirect costs not associated with patient care. The determination of distressed status will focus on whether the facility's distress stems from patient care costs, or whether the distress arises from expenses unrelated to patient care costs ( )

**e. Existing Cost Limits.** Under no circumstances may a facility's reimbursement exceed the lower of its actual costs or customary charge to private-pay patients, as required by federal law, subject to the exceptions in federal law. The Department's cost caps can be exceeded through the distressed facility process, but to an amount no greater than the federal upper payment limit. ( )

**03. Annual Review.** Distressed facility payments are assumed to be short-term in nature. Each distressed payment must be re-requested and re-justified for each subsequent fiscal year that the facility desires the distressed facility rate. ( )

**04. Prospective Application.** Distressed facility status will be applied only to facilities that are currently distressed or entering a period of distress. Distressed facility status will not be applied to retroactive rate

years.

( )

**05. Facility-by-Facility Basis.** Each facility must independently establish distress on its own merits, whether or not other facilities with a common owner may also be experiencing distress.

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**271. NURSING FACILITY - OVERSIGHT COMMITTEE.**

The Director will appoint an oversight committee to monitor implementation of the Prospective Payment System (PPS) for nursing facility reimbursement ~~that takes effect July 1, 1999~~. The committee will be made up of at least one (1) member representing each of the following organizations: the Department, the state association(s) representing free standing skilled care facilities, and the state association(s) representing hospital-based skilled care facilities. The committee will continue to meet periodically subsequent to the implementation of the PPS. ~~After three (3) years of implementation, the committee will examine the inflation factors used to inflate costs forward for rate setting (DRI + one percent (+1%), the inflation factors used in limiting the growth in the cost component limitations (DRI + two percent (+2%), and the level of the minimum cost component limitations (not lower than limits established July 1, 1999).~~

~~(3-19-07)~~( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-0803**

**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.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>FRIDAY OCTOBER 10, 2008 1:00 pm MDT</b>	<b>WEDNESDAY OCTOBER 15, 2008 1:00 pm PDT</b>	<b>FRIDAY OCTOBER 17, 2008 9:00 am MDT</b>
<b>H &amp; W Region VI Office Room 210 421 Memorial Dr. Pocatello, ID</b>	<b>H &amp; W Region I Office Large Conference Room 1120 Ironwood Drive Coeur d'Alene, ID</b>	<b>Medicaid Central Office Conference Room D&amp;E 3232 Elder Street Boise, ID</b>

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

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

Rules changes are being made to reform Medicaid's mental health program to: (1) help minimize duplication of mental health services, (2) eliminate overlapping components and contradictory requirements, (3) better match mental health benefits to participant's needs, and (4) better ensure that mental health program resources are appropriately used and services are delivered by qualified providers.

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

**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.

These rule changes reflect year one of a three-year planning process to incorporate new evidenced-based benefits and best practices. Also included are changes which improve the management of existing benefits, incorporating standards and applying appropriate limits. As rules are further defined, costs and cost-containment details will be identified. The overall impact is anticipated to slow the expenditure growth of Medicaid-paid mental health services while improving quality and maintaining access. Cost containment will be achieved by establishing clear assessment criteria and reducing inappropriate utilization.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, informal negotiated rulemaking was conducted. However, a Notice of Intent to Promulgate a rule was not published in the Administrative Bulletin. The Department held stakeholder meetings that included the Mental Health Providers Association, National Alliance for the Mentally Ill, Office of Consumer Affairs and Technical Assistance, Idaho Federation of Families, Idaho Psychological Association, National Association of Social Workers, and various participants receiving mental health services and providers of mental health services.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Pat Guidry at (208) 364-1813.

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 22, 2008.

DATED this 5th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0803**

**010. DEFINITIONS A THROUGH D.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Accrual Basis.** An accounting system based on the principle that revenues are recorded when they are earned; expenses are recorded in the period incurred. (3-19-07)

**02. Active Treatment.** Active treatment is the continuous participation, during all waking hours, by an individual in an aggressive, consistently implemented program of specialized and generic training, treatment, health and related services, and provided in accordance with a treatment plan developed by an interdisciplinary team and monitored by a qualified mental retardation professional (QMRP) directed toward: the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; or the prevention or deceleration of regression or loss of current functional status. (3-19-07)

**03. Activities of Daily Living (ADL).** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-19-07)

**04. Allowable Cost.** Costs that are reimbursable, and sufficiently documented to meet the requirements of audit. (3-19-07)

**05. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-19-07)

**06. Appraisal.** The method of determining the value of property as determined by an American Institute of Real Estate Appraiser (MAI) appraisal. The appraisal must specifically identify the values of land, buildings, equipment, and goodwill. (3-19-07)

**07. Assets.** Economic resources of the provider recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**08. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically-oriented tasks dealing with the functional needs of the participants and accommodating the participant's needs for long-term maintenance, supportive care, or instrumental activities of daily living (IADL). These services may include personal assistance and medical tasks that can be done by unlicensed

persons or delegated to unlicensed persons by a health care professional or the participant. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (7-1-07)T

**09. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-19-07)

**10. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-19-07)

**11. Audit Reports.** (3-19-07)

**a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-19-07)

**b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-19-07)

**c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-19-07)

**12. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-19-07)

**13. Bed-Weighted Median.** A numerical value determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median. (3-19-07)

**14. Capitalize.** The practice of accumulating expenditures related to long-lived assets which will benefit later periods. (3-19-07)

**15. Case Mix Adjustment Factor.** The factor used to adjust a provider's direct care rate component for the difference in the average Medicaid acuity and the average nursing facility-wide acuity. The average Medicaid acuity is from the picture date immediately preceding the rate period. The average nursing facility-wide acuity is the average of the indexes that correspond to the cost reporting period. (3-19-07)

**16. Case Mix Index (CMI).** A numeric score assigned to each nursing facility resident, based on the resident's physical and mental condition, that projects the amount of relative resources needed to provide care to the resident. (3-19-07)

**a.** Nursing Facility Wide Case Mix Index. The average of the entire nursing facility's case mix indexes identified at each picture date during the cost reporting period. If case mix indexes are not available for applicable quarters due to lack of data, case mix indexes from available quarters will be used. (3-19-07)

**b.** Medicaid Case Mix Index. The average of the weighting factors assigned to each Medicaid resident in the facility on the picture date, based on their RUG classification. Medicaid or non-Medicaid status is based upon information contained in the MDS databases. To the extent that Medicaid identifiers are found to be incorrect, the Department may adjust the Medicaid case mix index and reestablish the reimbursement rate. (3-19-07)

**c.** State-Wide Average Case Mix Index. The simple average of all nursing facilities "facility wide" case mix indexes used in establishing the reimbursement limitation July 1st of each year. The state-wide case mix index will be calculated annually during each July 1st rate setting. (3-19-07)

**17. Certified Family Home.** A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence. (3-19-07)

**18. Chain Organization.** A proprietorship, partnership, or corporation that leases, manages, or owns two (2) or more facilities that are separately licensed. (3-19-07)

**19. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-19-07)

**20. Clinical Nurse Specialist.** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-19-07)

**21. Collateral Contact.** ~~Contact made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record.~~ Coordination of care communication that is initiated by a medical or qualified professional with members of a participant's interdisciplinary team or consultant to the interdisciplinary team. The need for this service must appear on the treatment plan and must be documented in the progress notes of the participant's medical record. Collateral contact is used to: (3-19-07)( )

- a.** Coordinate care between professionals who are serving the participant: ( )
- b.** Relay medical results and explanations to members of the participant's interdisciplinary team; or ( )
- c.** Conduct an intermittent treatment plan review with the participant and his interdisciplinary team. ( )

**22. Common Ownership.** An individual, individuals, or other entities who have equity or ownership in two (2) or more organizations which conduct business transactions with each other. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider. (3-19-07)

**23. Compensation.** The total of all remuneration received, including cash, expenses paid, salary advances, etc. (3-19-07)

**24. Control.** Control exists where an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. (3-19-07)

**25. Cost Center.** A "collection point" for expenses incurred in the rendering of services, supplies, or materials that are related or so considered for cost-accounting purposes. (3-19-07)

**26. Cost Component.** The portion of the nursing facility's rate that is determined from a prior cost report, including property rental rate. The cost component of a nursing facility's rate is established annually at July 1st of each year. (3-19-07)

**27. Cost Reimbursement System.** A method of fiscal administration of Title XIX and Title XXI which compensates the provider on the basis of expenses incurred. (3-19-07)

**28. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-19-07)

**29. Cost Statements.** An itemization of costs and revenues, presented on the accrual basis, which is used to determine cost of care for facility services for a specified period of time. These statements are commonly called income statements. (3-19-07)

**30. Costs Related to Patient Care.** All necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs

related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. They include, but are not limited to, costs such as depreciation, interest expenses, nursing costs, maintenance costs, administrative costs, costs of employee pension plans, and normal standby costs. (3-19-07)

**31. Costs Not Related to Patient Care.** Costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are nonallowable in computing reimbursable costs. They include, for example, cost of meals sold to visitors or employees; cost of drugs sold to other than patients; cost of operation of a gift shop; and similar items. Travel and entertainment expenses are nonallowable unless it can be specifically shown that they relate to patient care and for the operation of the nursing facility. (3-19-07)

**32. Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt under PRM, Chapter 3, Sections 310 and 312. (3-19-07)

**33. Day Treatment Services.** Day treatment services are developmental services provided regularly during normal working hours on weekdays by, or on behalf of, the Intermediate Care Facility for the Mentally Retarded (ICF/MR). However, day treatment services do not include recreational therapy, speech therapy, physical therapy, occupational therapy, or services paid for or required to be provided by a school or other entity. (3-19-07)

**34. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-19-07)

**35. Depreciation.** The systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated life of the assets. (3-19-07)

**36. Developmental Disability (DD).** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age; and (3-19-07)

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; (3-19-07)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)

**c.** Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (3-19-07)

**37. Direct Care Costs.** Costs directly assigned to the nursing facility or allocated to the nursing facility through the Medicare cost finding principles and consisting of the following: (3-19-07)

**a.** Direct nursing salaries that include the salaries of professional nurses (RN), licensed professional nurses, certified nurse's aides, and unit clerks; (3-19-07)

**b.** Routine nursing supplies; (3-19-07)

**c.** Nursing administration; (3-19-07)

**d.** Direct portion of Medicaid related ancillary services; (3-19-07)

- e. Social services; (3-19-07)
- f. Raw food; (3-19-07)
- g. Employee benefits associated with the direct salaries; and (3-19-07)
- h. Medical waste disposal, for rates with effective dates beginning July 1, 2005. (3-19-07)
- 38. **Director.** The Director of the Department of Health and Welfare or his designee. (3-19-07)
- 39. **Durable Medical Equipment (DME).** Equipment other than prosthetics or orthotics which can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a medical assistance participant. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES.**

In addition to mental health services covered under IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 710 through 717, the Medicaid Enhanced Plan Benefits includes the following enhanced outpatient mental health benefits. (3-19-07)(\_\_\_\_)

**01. Psychotherapy.** ~~The enhanced services include additional psychotherapy in a Mental Health Clinic as described in Subsection 115.01 of these rules.~~ **Community Reintegration.** The enhanced services include community reintegration as described in Sections 111 through 146 of these rules. (3-19-07)(\_\_\_\_)

**02. Partial Care Services.** The enhanced services include partial care services in a Mental Health Clinic as described in Subsection 115.021 of these rules. (3-19-07)(\_\_\_\_)

**03. Psychotherapy.** The enhanced services include additional psychotherapy in a Mental Health Clinic as described in Subsection 116.01 of these rules. (\_\_\_\_)

**03. Psychosocial Rehabilitation Skill Training.** The enhanced services include ~~psychosocial rehabilitation~~ skill training as described in Sections 123.11 through 146 of these rules. (3-19-07)(\_\_\_\_)

**111. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - DEFINITIONS.**

These definitions apply to Sections 100 through 146 of these rules. (3-19-07)

**01. Agency.** A Medicaid provider who delivers either mental health clinic services or psychosocial rehabilitative services, or both. (\_\_\_\_)

**02. Assessment Hours.** Time allotted for completion of intake, evaluation, and diagnostic services. (3-19-07)(\_\_\_\_)

**03. Community Reintegration.** A psychosocial rehabilitation (PSR) service that provides practical information and support directed toward the participant maintaining his current functioning level or practicing newly-acquired life skills. This service is intended to help the participant integrate progress on his treatment plan objectives into daily life. (\_\_\_\_)

**04. Comprehensive Diagnostic Assessment.** A thorough assessment of the participant's current condition and complete medical and psychiatric history. The comprehensive diagnostic assessment must incorporate information typically gathered in an intake assessment process if an intake assessment has not been completed by the provider agency conducting the comprehensive diagnostic assessment. The comprehensive diagnostic assessment must include: (\_\_\_\_)

- a.** A current mental status examination; ( )
- b.** A description of the participant's readiness and motivation to engage in treatment, participate in the development of his treatment plan and adhere to his treatment plan; and ( )
- c.** The five (5) axes diagnoses under DSM-IV-TR with recommendations for level of care, intensity, and expected duration of treatment services. ( )

**025.** **Demographic Information.** Information that identifies participants and is entered into the Department's database collection system. (3-19-07)

**06.** **Functional Assessment.** In rehabilitative mental health, this assessment is used to provide supplemental information to the comprehensive diagnostic assessment that provides information on the current or required capabilities needed by a participant to maintain himself in his chosen environment. It is a description and evaluation of the participant's practical ability to complete tasks that support activities of daily living, family life, life in the community, and promote independence. This assessment assists participants to better understand what skills they need to achieve their rehabilitation goals. ( )

**037.** **Goal.** The desired outcome related to an identified issue. (3-19-07)

**048.** **Initial Contact.** The date a participant, or participant's parent; or legal guardian comes in to an agency and requests Enhanced Plan services. (~~3-19-07~~)( )

**09.** **Intake Assessment.** An initial assessment of the participant that is conducted by an agency staff person who has been trained to perform mental status examinations and solicit sensitive health information for the purpose of identifying service needs prior to developing an individualized treatment plan. The intake assessment must contain a description of the reason(s) the participant is seeking services and a description of the participant's current symptoms, present life circumstances across all environments, recent events, resources, and barriers to mental health treatment. If this is the initial screening process then it must be used to determine whether mental health services are a medical necessity for the participant. ( )

**10.** **Interdisciplinary Team.** Group that consists of two (2) or more individuals in addition to the participant, the participant's legal guardian, and the participant's natural supports, including professionals from several fields or professions who combine their skills and resources to provide guidance and assistance in the creation of the participants treatment plan. ( )

**0511.** **Issue.** A statement specifically describing the participant's behavior directly relating to the participant's mental illness and functional impairment. (3-19-07)

**0612.** **Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. The nurse practitioner and clinical nurse specialist must have experience prescribing psychotropic medication. (3-19-07)

**0713.** **Objective.** A milestone toward meeting the goal that is concrete, measurable, time-limited, and behaviorally specific. (3-19-07)

**0814.** **Partial Care.** Partial care is treatment for those children with serious emotional disturbance and adults with severe and persistent mental illness whose functioning is sufficiently disrupted so as to interfere with their productive involvement in daily living. Partial care services are a structured program of therapeutic interventions that assist program participants in the stabilization of their behavior and conduct through the application of principles of behavior modification for behavior change and structured, goal-oriented group socialization for skill acquisition. (3-19-07)

**15.** **Psychiatric Nurse, Licensed Master's Level.** A certified psychiatric nurse, Clinical Nurse Specialist or Psychiatric Nurse Practitioner, must be licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. ( )

~~0916.~~ **Psychosocial Rehabilitative Services (PSR).** ~~Rehabilitative services provided both to children with serious emotional disturbance and to adults with severe and persistent mental illness to address functional deficits due to psychiatric illness and to restore independent living, socialization, and effective life management skills.~~ An array of rehabilitative services that emphasize the Recovery Model for children with serious emotional disturbance and for adults with severe and persistent mental illness. These services include skill development interventions and adaptations for daily living tasks that maintain or increase a participant's functional abilities. These services also enable a participant to apply or maintain skills and thereby increase his ability to live independently in his community. PSR services are intended to target those behaviors and symptoms associated with the participant's mental illness that interrupt the participant's ability to accomplish desired tasks. PSR services include skill training, community reintegration, and crisis intervention that provide programming that meet the participant's level of need in structure and intensity. (3-19-07)( )

**17. Psychotherapy.** A method of treating and managing psychiatric disorders through the use of evidenced-based psychotherapeutic modalities that focus on behavioral and cognitive aspects of a participant's abilities. ( )

**18. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. ( )

**19. Recovery Model.** An evidence-based treatment model that supports healing and transformation, enabling a participant with a mental health problem to live a meaningful life in a community of his choice while striving to achieve his full potential. It includes services for participants to build their skills to promote and manage their overall wellness. ( )

**20. Restraints.** Restraints include the use of physical, mechanical, or chemical interventions to modify participant behavior. It also includes the use of seclusion to attempt to modify participant behavior. ( )

**21. Serious Emotional Disturbance (SED).** In accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code, SED is: ( )

**a.** An emotional or behavioral disorder, according to the DSM-IV-TR which results in a serious disability; and ( )

**b.** Requires sustained treatment interventions; and ( )

**c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. ( )

**d.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. ( )

**22. Serious Mental Illness (SMI).** In accordance with Volume 58 of the Federal Register, 29422-02, June 24, 1999, a person with SMI: ( )

**a.** Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and ( )

**b.** Must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. ( )

**23. Skill Training.** A curriculum-based method of presenting skill building concepts that meets the needs identified on the person's assessment, focuses on new interventions to minimize functional barriers, and promotes increased independence in thinking and behavior. ( )

**24. Tasks.** Specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan. (3-19-07)

**25. Treatment Plan Review.** The practice of holding a meeting among members of a participant's interdisciplinary team that is focused on evaluating the programs, progress, and future plans of a participant while providing feedback and suggestions intended to help team members and the participant to accomplish the participant's goals as identified on the participant's treatment plan. ( )

**26. USpra.** The United States Psychiatric Rehabilitation Association is an association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. USpra also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. <http://www.uspra.org> ( )

## 112. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - PARTICIPANT ELIGIBILITY.

To qualify for enhanced outpatient mental health services, a participant must obtain a comprehensive diagnostic assessment as described in Section 113 of these rules. The comprehensive diagnostic assessment for PSR, Partial Care, and Psychotherapy enhanced outpatient mental health services must include documentation of the medical necessity for each service to be provided. For partial care services, the comprehensive diagnostic assessment must also contain documentation that shows the participant is currently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration that would interfere with the participant's ability to maintain his current level of functioning. For PSR or partial care services, the participant must also obtain a functional assessment that describes the need for skills training or partial care, depending on which service is being sought. (4-2-08)( )

**01. General Participant Eligibility Criteria.** In order for a participant to be eligible for enhanced outpatient mental health services, the following criteria must be met and documented in the comprehensive diagnostic assessment: (3-19-07)( )

**a.** The service represents the least restrictive setting and other services have failed or are not appropriate for the clinical needs of the participant. (3-19-07)( )

**b.** The services can reasonably be expected to improve the participant's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced. (4-2-08)

**c.** Participants identified in Subsections 112.01.c.i. through 112.01.c.iii. of this rule cannot participate in enhanced outpatient mental health services: (4-2-08)

i. Participants at immediate risk of self-harm or harm to others who cannot be stabilized; (4-2-08)

ii. Participants needing more restrictive care or inpatient care; and (4-2-08)

iii. Participants who have not fulfilled the requirements of Subsections 112.02 or 112.03 of these rules. (4-2-08)

**02. Eligibility Criteria for Children.** To be eligible for services, a participant under the age of eighteen (18) must have a serious emotional disturbance (SED). *The following definition of the SED target population is based on the definition of SED found in the Children's Mental Health Services Act, Section 16-2403, Idaho Code.* (4-2-08)( )

**a.** ~~Presence of an emotional or behavioral disorder, according to the DSM-IV-TR which results in a serious disability; and~~ (4-2-08)



- ~~b-~~ Requires sustained treatment interventions; and (3-19-07)
- ~~e-~~ Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (3-19-07)
- ~~d-~~ A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-19-07)

**03. Eligibility Criteria for Adults.** To be eligible for services, a participant must be eighteen (18) years or older and have a serious mental illness (SMI) ~~as defined in Volume 58 of the Federal Register, 29422-02, June 24, 1999.~~ (4-2-08)(\_\_\_\_)

~~a-~~ Currently or at any time during the year, he must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and (4-2-08)

~~b-~~ He must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (4-2-08)

**04. Level of Care Criteria - Mental Health Clinics.** To be eligible for mental health clinic services, a participant must meet the criteria as described in Subsections 112.04.a. and 112.04.b. of this rule. (4-2-08)

a. Children must meet Subsections 112.01 and 112.02 of this rule. (4-2-08)

b. Adults must meet Subsections 112.01 and 112.03 of this rule. (4-2-08)

**05. Level of Care Criteria - Psychosocial Rehabilitation (PSR) ~~Agencies~~ Services and Partial Care Services for Children.** To be eligible for ~~the partial care services of or the PSR or Partial Care services of skill training and community reintegration,~~ a child must meet the criteria of SED and Subsections ~~112.041-a- and 112.02~~ of this rule and must experience a substantial impairment in functioning. ~~A child's level and type of functional impairment must be assessed using described in the functional assessment. The Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS) instrument must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at regular intervals in order to determine the child's change in functioning that occurs as a result of mental health treatment. Items endorsed on the CAFAS/PEFAS must be supported by specific descriptions of the child's observable behavior in the comprehensive diagnostic assessment.~~ Substantial impairment requires ~~a full eight (8) scale score of eighty (80) or higher with moderate impairment in at least one (1) of the following three (3) scales in Subsections 112.05.a. through 112.05.e. of this rule that the child score in the moderate range in at least two subscales on the CAFAS/PECFAS. One of the two (2) subscales must be from the following list:~~ (4-2-08)(\_\_\_\_)

a. Self-harmful behavior; (4-2-08)

b. Moods/Emotions; or (4-2-08)

c. Thinking. (4-2-08)

**06. Level of Care Criteria - Psychosocial Rehabilitation (PSR) ~~Agencies~~ Services and Partial Care Services for Adults.** To be eligible for ~~partial care services of or the PSR or Partial Care services of skill training and community reintegration,~~ an adult must meet the criteria of SMI and Subsections ~~112.041-b- and 112.03~~ of this rule. In addition, the following criteria in Subsections 112.06.a. and 112.06.b. of this rule must be met. (4-2-08)(\_\_\_\_)

a. The participant must have a diagnosis under DSM-IV-TR, of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic

Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis; and (4-2-08)

**b.** The psychiatric disorder must be of sufficient severity to ~~cause~~ affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the ~~following~~ following areas in Subsection 112.056.b.i. through 112.056.b.viii. of this rule on either a continuous or an intermittent, at least once per year, basis. The detail of the adult's level and type of functional impairment must be described in the functional assessment: (4-2-08)(\_\_\_\_)

- i. Vocational/educational; (4-2-08)
- ii. Financial; (4-2-08)
- iii. Social relationships/support; (4-2-08)
- iv. Family; (4-2-08)
- v. Basic living skills; (4-2-08)
- vi. Housing; (4-2-08)
- vii. Community/legal; or (4-2-08)
- viii. Health/medical. (4-2-08)

**07. Criteria Following Discharge For Psychiatric Hospitalization.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules are eligible for enhanced outpatient mental health clinic and PSR services. (3-19-07)

**a.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules, described in Subsection 112.02 of this rule for children, and in Subsection 112.03 of this rule for adults, are considered immediately eligible for PSR enhanced outpatient mental health services for a period of at least one hundred and twenty (120) days following discharge from the hospital. The individualized treatment plan must be completed and ~~submitted to the Department for prior authorization~~ documented in the medical record within ten (10) days of discharge. (4-2-08)(\_\_\_\_)

i. Up to two (2) hours of plan development hours may be for coordinating with hospital staff and others the participant chooses. These plan development hours are to be used for the development of an individualized treatment plan based ~~solely~~ on the participant's hospital records and past history. The provider agency does not have to perform any additional assessment in order to initiate treatment nor does the participant need to qualify as described in Subsection 113.01 of these rules. (3-19-07)(\_\_\_\_)

ii. Upon ~~submission of the completed individualized treatment plan to the Department or its designee, PSR services may be prior authorized~~ initiation of treatment at the agency, the treatment plan is valid for no more than one hundred twenty (120) days from the date of discharge from the hospital. For services to continue beyond one hundred twenty (120) days, the requirements of Section 129 of these rules must be met by the provider agency. An intake assessment must be completed within ten (10) days of the initiation of treatment. A comprehensive diagnostic assessment must be completed in lieu of the intake assessment if one is not available from the hospital or if the one from the hospital does not contain the needed clinical information. (3-19-07)(\_\_\_\_)

**b.** ~~A mental health clinic may serve a participant with Enhanced Plan services following a psychiatric hospitalization after a comprehensive assessment has been completed. The assessment~~ In order for the participant to continue in the services listed on the post-hospitalization treatment plan beyond one hundred twenty (120) days, the provider must establish that the participant meets the criteria as described in Subsections 112.01 through 112.06 of this rule as applicable to the services being provided, and ~~is~~ that enhanced outpatient mental health services are appropriate for the participant's age, circumstances, and medically necessary level of care ~~that is medically necessary.~~ The PSR or mental health clinic provider does not need to submit form H0002 because the participant is already in the Enhanced Plan. (4-2-08)(\_\_\_\_)

**113. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - INTAKE ASSESSMENT.**

Intake assessments may be performed by PSR agencies and Mental Health Clinics for participants who transfer to them from other agencies. Intake assessments must meet requirements listed at IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 710.03. Intake assessments must not be performed as an initial evaluation service in PSR agencies when the PSR agency is performing a comprehensive diagnostic assessment. (\_\_\_\_)

**1134. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - COMPREHENSIVE DIAGNOSTIC ASSESSMENT.**

In order to determine eligibility for enhanced outpatient mental health services, a comprehensive diagnostic assessment must first be completed by one (1) of the following licensed professionals: psychiatrist, physician, other practitioner of the healing arts, psychologist, clinical social worker, clinical professional counselor, or licensed marriage and family therapist. For participants seeking services beyond twelve (12) months, a review of the assessment is required to determine whether a full comprehensive diagnostic assessment or an updated assessment is needed to reflect the participant's current status on an annual basis. If, upon this review, the treatment staff determines that the latest assessment accurately represents the status of the participant in the targeted service areas, then the medical record must contain documentation from the treatment staff stating so. In such cases, only an updated assessment that includes a new mental status examination is required. The assessment ~~must address the participant's strengths and supports, deficits and needs,~~ and must be directed toward formulation of a diagnosis and a written individualized treatment plan. The participant must take part in the assessment to the fullest extent possible. ~~The assessment must be directly related to the participant's mental illness and level of functioning. Information regarding services received from any of the participant's service provider(s) must be collected and reported on the comprehensive assessment. The assessment and supplemental psychiatric, psychological, or other specialty evaluations and tests must be written, dated, signed and be retained in the participant's medical record. The assessment is reimbursable if conducted by qualified PSR provider agency staff listed under Section 131 of these rules, or qualified Mental Health Clinic staff listed in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 715. Each of the following areas must be assessed initially and at least annually thereafter.~~ The comprehensive diagnostic assessment must include a five (5) axes diagnosis under DSM-IV-TR documented in a face-to-face evaluation, a complete psychiatric and medical history, a current mental status examination, treatment recommendations including level of care, and any other information that contributes to the assessment of the participant's current psychiatric status and need for services. (3-19-07)(\_\_\_\_)

~~01. Psychiatric History and Current Mental Status. Psychiatric history and current mental status which includes, at a minimum:~~ (3-19-07)

~~a. Diagnosis documented within the last twelve (12) months in a face-to-face evaluation by a licensed physician or other licensed practitioner of the healing arts, licensed master's level psychiatric nurse, licensed psychologist, licensed clinical professional counselor, licensed marriage and family therapist, or licensed clinical social worker within the scope of his practice under state law;~~ (3-19-07)

~~b. Age of the participant at onset;~~ (3-19-07)

~~c. Childhood history of physical or sexual abuse;~~ (3-19-07)

~~d. Number of hospitalizations;~~ (3-19-07)

~~e. Precursors of hospitalizations;~~ (3-19-07)

~~f. Symptoms of decompensation the participant manifests;~~ (3-19-07)

~~g. Participant's ability to identify his symptoms;~~ (3-19-07)

~~h. Medication history;~~ (3-19-07)

~~i. Substance abuse history;~~ (3-19-07)

~~j. History of mental illness in the family;~~ (3-19-07)

~~k. Current mental status; and (3-19-07)~~  
~~l. Any other information that contributes to the assessment of the participant's current psychiatric status. (3-19-07)~~

~~02. **Health or Medical Issues.** Medical history and current medical status which includes at a minimum, history of any major non-psychiatric illnesses, surgeries, hospitalizations, dates of last physical, dental, or eye examinations, pertinent family history of medical illness, current health problems or needs, current medications, name of current primary physician; health or medical issues or both including medical complications that result from mental illness. (3-19-07)~~

~~03. **Vocational And Educational Status.** Vocational and educational status which includes at a minimum, current and past job status, level of satisfaction with the vocation, educational level, military status, strengths and barriers to employment. For children, this area addresses relevant school enrollment, performance, achievement levels and school-related social functioning. (3-19-07)~~

~~04. **Financial Status.** Financial status which includes at a minimum, adequacy and stability of the participant's financial status, financial difficulties of the participant, resources available, and the participant's ability to manage personal finances. (3-19-07)~~

~~05. **Social Relationships and Supports.** Social relationships and supports which includes, at a minimum, participant's ability to establish/maintain personal support systems or relationships and participant's ability to develop leisure, recreational, or social interests. (3-19-07)~~

~~06. **Family Status.** Family status which includes, at a minimum, the participant's ability or desire to carry out family roles, participant's perception of the support he receives from his family, and the role the family plays in the participant's mental illness. For children this area addresses the child's functioning within the family and the impact of the child's mental illness on family functioning. (3-19-07)~~

~~07. **Basic Living Skills.** Basic living skills which include at a minimum, participant's ability to meet age appropriate basic living skills including transition to adulthood. (3-19-07)~~

~~08. **Housing.** Housing which includes at a minimum, current living situation and level of satisfaction with the arrangement, and appropriateness of current living situation with respect to the participant's needs, his health and safety. (3-19-07)~~

~~09. **Community and Legal Status.** Community and Legal status which includes at a minimum, legal history with law enforcement, transportation needs, supports the participant has in the community, and daily living skills necessary for community living. (3-19-07)~~

**115. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - FUNCTIONAL ASSESSMENT.**  
For participants seeking the PSR services of skill training and community reintegration and for participants seeking partial care services, a functional assessment must be completed by staff who meet the requirements under Section 131 of these rules. Staff performing the CAFAS/PECFAS must be the same staff completing the functional assessment. The functional assessment must incorporate the CAFAS/PECFAS findings. A functional assessment must evaluate the participant's use of critical skills that are needed for adaptive functioning in the various environments in which he lives. The provider should assess those functional skill areas identified by the participant and the comprehensive diagnostic assessment that prohibit the participant from completing desired tasks in their day-to-day functioning. The functional assessment should include recommendations for training in skills areas from the following list in which the participant is interested in improving his skills. The number of skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment as document in the comprehensive diagnostic assessment. ( )

**01. Health or Medical Issues.** Focus must be on participant's skills for self-managing health and medical issues including ability to schedule and keep medical appointments, maximize opportunities for communicating health status to medical providers, and adherence to medical regimens prescribed by healthcare

providers. ( )

**02. Vocational And Educational Status.** Focus must be on skill development to maximize adaptive occupational functioning as applicable to work or school settings. ( )

**03. Financial Status.** Focus must be on the participant's skills for managing personal finances. ( )

**04. Social Relationships and Supports.** Focus must be on participant's skills for establishing and maintaining personal support systems or relationships and participant's skills for developing and participating in leisure, recreational, or social interests. ( )

**05. Family Status.** Focus must be on participant's skills needed to carry out family roles and participate in family relationships. ( )

**06. Basic Living Skills.** Focus must be on participant's skills needed to perform age-appropriate basic living skills, including transition to adulthood. ( )

**07. Housing.** Focus must be on participant's skills for obtaining and maintaining safe and appropriate housing. ( )

**08. Community and Legal Status.** Focus must be on participant's skills necessary for community living including compliance with rules, laws, and informal agreements made with others. ( )

#### 1146. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - WRITTEN INDIVIDUALIZED TREATMENT PLAN.

A written individualized treatment plan must be developed and implemented for each participant of enhanced outpatient mental ~~outpatient~~ health services as a means to address the enhanced service needs of the participant. Each individualized treatment plan must specify the individual staff person responsible for providing each service, and the amount, frequency and expected duration of treatment. Treatment planning is reimbursable if conducted by a professional identified in Subsections 132.01 through 132.09 of these rules. (3-19-07)( )

**01. Goals.** Services identified on the treatment plan must support the goals of any of the following as applicable to the participant's identified needs: (3-19-07)

**a. PSR Skill Training.** The goal is ~~the maximum reduction of mental disability and achievement of the highest possible functioning level of that participant; for adults this means becoming independent or maintaining the highest level of independence; for children this means learning or maintaining developmentally appropriate role functioning~~ to assist the participant in regaining skills that have been lost due to the symptoms of his mental illness so that he may achieve maximum reduction of symptoms of mental illness or serious emotional disturbance for adaptive community living. For a participant who is a child, the targeted skills must be those that would otherwise have been developed except for the interference of the symptoms of SED. (3-19-07)( )

**b. Community Reintegration.** The goal is to provide practical information and support for the participant to be able to be effectively involved in the rehabilitation process. ( )

**bc.** Partial care. The goal is to decrease the severity and acuity of presenting symptoms so that the participant may be maintained in the least restrictive setting and to increase the participant's interpersonal skills in order to obtain the optimal level of interpersonal adjustment. (3-19-07)

**ed.** Psychotherapy. The goal is to ~~develop and implement~~ engage in active treatment that involves psychotherapeutic strategies for problem resolution to promote optimal functioning and wellness. (3-19-07)( )

**e.** Psychopharmacology. The goal is to obtain a decrease or remission of symptoms of psychiatric illness and improve quality of life through the use of pharmacological agents without causing adverse affects. ( )

**02. Plan Content.** An individualized treatment plan must ~~include~~ meet the ~~following~~ requirements listed in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 709, at a minimum. Additionally, at least one (1)

objective is required in the areas that are most likely to lead to the greatest level of stabilization. (3-19-07)(\_\_\_\_)

~~a. An issue statement specifically describing the participant's behavior that directly relates to his mental illness and functional impairment; (3-19-07)~~

~~b. A statement which identifies the participant's goal relative to the goals of Enhanced Outpatient Mental Health Services as per Sections 120 of these rules; (3-19-07)~~

~~c. Overall goals and concrete, measurable objectives to be achieved, including time frames for completion. At least one (1) objective is required for the focus areas which must likely lead to the greatest stabilizing impact. At a minimum, this should include at least one (1) objective in each of the two (2) focus areas which qualify the participant for Enhanced Outpatient Mental Health Services; (3-19-07)~~

~~d. Tasks that are specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan and are developed by the participant and the selected provider(s). Each task description must specify the anticipated place of service, the frequency of services, the type of service, and the person(s) responsible to assist the participant in the completion of tasks; and (3-19-07)~~

~~e. Documentation of who participated in the development of the individualized treatment plan. The participant, if possible, must take part in the development of the individualized treatment plan. The adult participant or the adult participant's legal guardian must sign the individualized treatment plan or documentation must be provided why this was not possible, including participant refusal to sign. For a minor child participant, the child's parent or legal guardian must sign the plan. A copy of the plan must be given to the adult participant and his legal guardian or to the parent or legal guardian when the participant is a minor child. (3-19-07)~~

**03. Plan Timeframes.** An individualized treatment plan must be developed and signed by a physician or a licensed practitioner of the healing arts within thirty (30) calendar days from initial contact. Intermittent treatment plan reviews must occur as medically necessary, but must not exceed one hundred twenty (120) days between reviews. The treatment plan must be completely rewritten for participants who will continue in treatment beyond twelve (12) months. (3-19-07)(\_\_\_\_)

~~04. Annual Review. An individualized treatment plan review by the provider agency staff and the participant must occur at least annually. During the review, the provider agency staff and the participant review any objectives which may be added to or deleted from the individualized treatment plan. Input from other participants in the plan including service provider(s) must be considered. Other attendees of the individualized treatment plan review may be chosen by the adult participant or his legal guardian if any or, when the participant is a minor child, by his family or legal guardian and the provider agency staff. (3-19-07)~~

~~05. Physician Review. Each individualized treatment plan must be reviewed and signed by a physician or a licensed practitioner of the healing arts at least annually. Treatment plans developed by a Mental Health Clinic must be signed by a Medical Doctor (MD) or Doctor of Osteopathy (DO). (3-19-07)~~

~~06. Date of Plan. Following the completion of the comprehensive assessment and the date the plan is established, that date continues to be the annual date of the plan. Mental health clinics and PSR provider agencies serving the same participant must coordinate services such that the annual review date occurs on the same anniversary date. (3-19-07)~~

**074. Choice of Providers.** The eligible participant will or his legal guardian must be allowed to choose whether or not he desires to receive enhanced outpatient mental health services and who the which provider(s) of services will be agency or agencies he would like to assist him in accomplishing the objectives stated in his individualized treatment plan. Documentation must be included in the participant's medical record showing that the participant or his legal guardian has been informed of his rights to refuse services and choose providers agencies. (3-19-07)(\_\_\_\_)

~~08. Authorization Time Period. PSR Service authorizations are limited to a twelve (12) month period and must be reviewed and updated at least annually. (3-19-07)~~

~~095.~~ **No Duplication of Services.** The provider agency or its designee must monitor, coordinate, and jointly plan with all known providers to a participant to prevent duplication of services provided to enhanced outpatient mental health services participants through other Medicaid reimbursable and non-Medicaid programs. (3-19-07)

~~1157.~~ **ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - MENTAL HEALTH CLINICS (MHC).**

All rules in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 707 through 718 apply to Mental Health Clinic services in this chapter with the ~~following~~ enhancements described under Section 118 of these rules. (3-19-07)(\_\_\_\_)

**118. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES -- DESCRIPTIONS.**

**01. Psychotherapy.** Under the Medicaid Enhanced Plan, individual, family and group psychotherapy services are limited to forty-five (45) hours per calendar year. (3-19-07)

**02. Partial Care Services.** Under the Medicaid Enhanced Plan, partial care services are limited to ~~thirty-six~~ twelve (~~36~~12) hours per week per eligible participant. (3-19-07)(\_\_\_\_)

**a.** In order to be considered a partial care service, the service must: (3-19-07)

**i.** Be provided in a structured environment within the MHC setting; (3-19-07)

**ii.** Be ~~a needed service as indicated~~ identified as a service need through the participant's comprehensive diagnostic assessment ~~in Section 113 of these rules and Section 114 of these rules and the functional assessment and be indicated~~ on the individualized treatment plan with documented, concrete, and measurable ~~goals~~ objectives and outcomes; and (3-19-07)(\_\_\_\_)

**iii.** Provide interventions for relieving symptoms, stabilizing behavior, and acquiring specific skills. These interventions must include the specific medical services, therapies, and activities that are used to meet the treatment objectives. (3-19-07)(\_\_\_\_)

**b.** Staff Qualifications for Partial Care Services. Licensed, qualified professionals providing partial care services must have, at a minimum, one (1) or more of the qualifications listed in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 715.01. (3-19-07)

**c.** Excluded Services. Services that focus on vocation, recreation or education are not reimbursable under Medicaid Partial Care. Services that are provided outside the clinic facility are not reimbursable. (3-19-07)

~~116.—119.~~ **(RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**123. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - DESCRIPTIONS.**

~~The goal of PSR services is to aid participants in work, school, family, community, or other issues related to their mental illness. It is also to aid them in obtaining developmentally appropriate skills for living independently and to prevent movement to a more restrictive living situation.~~ All services provided must be clinically appropriate in content, service location and duration and based on measurable and behaviorally specific and achievable objectives in accordance with the treatment plan. PSR consists of the following services described in Subsections 123.01 through 123.08 of this rule. (1-1-08)F(\_\_\_\_)

**01. Pharmacological Management.** Pharmacological management services must be provided in accordance with the individualized treatment plan. Pharmacological management, alone, may be provided if the plan indicates that this service is necessary and sufficient to prevent relapse or hospitalization and that functional deficits

are either manageable by the participant or absent but expected to return if pharmacological management is not provided. The telephoning of prescriptions to the pharmacy is not a billable service. Medication prescriptions must be ~~done~~ issued to the participant in person by a licensed physician or other practitioner of the healing arts within the scope of practice defined in their license ~~in visual contact with the participant~~. (3-19-07)(\_\_\_\_)

**02. ~~Individual Psychosocial Rehabilitation (PSR) Skill Training.~~ ~~Individual psychosocial rehabilitation~~ Skill training is the service of providing instruction for skill development to the participant in a custom-tailored approach with the goal of increasing the participant's ability to function in the various environments he or his legal guardian choose. The service must be provided in accordance with the objectives specified in the individualized treatment plan. ~~Individual PSR is a service provided to an individual participant on a one-to-one basis.~~ ~~Individual PSR Skill training~~ is reimbursable if provided by an agency with a current provider agreement and the agency staff delivering the service meet the qualifications, in accordance with Section 131 of these rules. ~~Individual PSR Skill training~~ includes one (1) or more of the following: (3-19-07)(\_\_\_\_)**

a. Assistance in gaining and utilizing skills necessary to ~~undertake school, employment, or independence~~ function adaptively in home and community settings. This includes helping the participant learn personal hygiene and grooming, selecting and acquiring appropriate clothing, ~~time management and other skills related to participant's psychosocial circumstances;~~ and other self-care skills needed for community integration. This service cannot be duplicative of other services the participant may be receiving from other programs. (3-19-07)(\_\_\_\_)

b. ~~Ongoing on-site assessment, evaluation, and feedback sessions, including one hundred twenty (120) day reviews, to identify symptoms or behaviors related to the participant's mental illness and to develop interventions with the participant and his employer or teacher;~~ Assistance in gaining and utilizing skills necessary for managing personal finances, living arrangements, and daily home care duties. (3-19-07)(\_\_\_\_)

c. Individual interventions in social skill training directly related to the participant's mental illness to improve ~~communication skills~~ community functioning and to facilitate appropriate interpersonal behavior, ~~directly related to the participant's mental illness;~~ (3-19-07)(\_\_\_\_)

d. ~~Problem solving, support, and supervision related to activities of daily living to assist participants in gaining and utilizing skills such as personal hygiene, household tasks, use of transportation, and money management;~~ Assistance in gaining and utilizing cognitive skills for problem-solving everyday dilemmas, listening, symptom management, and self-regulation. (3-19-07)(\_\_\_\_)

e. ~~Assisting the participant with receiving necessary services when he has difficulty or is unable to obtain them.~~ Assistance for gaining and utilizing communications skills for the participant to be able to express himself coherently to others including other service providers. (3-19-07)(\_\_\_\_)

i. ~~This assistance may be given by accompanying him to Medicaid reimbursable appointments. For reimbursement purposes, the PSR agency staff person must be present during the appointment and deliver a PSR service during the appointment. Travel time and time waiting to meet with the Medicaid provider are not reimbursable; however, reimbursement is available for the delivery of prior authorized PSR services occurring during these times.~~ For participants receiving skill training for communication whose current communication functioning is impaired to the extent that he cannot express necessary information to his healthcare providers or understand instructions given to him by healthcare providers, the PSR agency staff person may accompany the participant to medical appointments as a part of the communication skill training service. (3-19-07)(\_\_\_\_)

ii. ~~To be eligible for this service, the participant must have a functional impairment that affects his ability to communicate accurately due to a mental illness and be unable to report symptoms to a licensed practitioner, as identified in Subsection 131.01 of these rules, or be unable to understand the practitioner's instructions. The impairment must be identified in the assessment. The individualized treatment plan must identify how the impairment is to be resolved and include objectives toward independence in this area. For children, this service is not intended to replace the parent's responsibility in advocating for or attending appointments for their child;~~ For reimbursement purposes, the PSR agency staff person must be present during the appointment and deliver a skill training service during the appointment. Travel time and time waiting to meet with the Medicaid provider are not reimbursable. (3-19-07)(\_\_\_\_)



iii. The individualized treatment plan must identify how the impairment is to be resolved and include objectives toward independence in this area. For children, this service is not intended to replace the parent's responsibility in advocating for or attending appointments for their child; ( )

f. Medication education may be provided by a licensed physician, licensed nurse, or a licensed practitioner of the healing arts within the scope of his practice under state law. This service focuses on educating the participant about the role and effects of medications in treating symptoms of mental illness, ~~and symptom management, and adherence to the treatment regimen.~~ (3-19-07)( )

g. ~~Development of coping skills and symptom management to identify the symptoms of mental illness that are barriers to successful community integration and crisis prevention. Assistance for gaining and utilizing skills needed by the participant to arrange for his transportation, or to access and utilize the public transportation system.~~ (3-19-07)( )

~~h. May assist participant with "self" administration of medications by verbal prompts according to the direction of the prescribing physician. Verbal prompts must be delivered face-to-face and an assessment of the participant's functioning must be completed and documented. In cases where verbal prompts by phone are justified, they must be specifically prior authorized.~~ (3-19-07)

**03. Community Reintegration.** Community reintegration is the service of providing practical information and support to a participant to help the participant maintain skills or to practice newly-acquired skills. This type of service may include: ( )

a. Assisting the participant with self-administration of medications by verbal prompts according to the direction of the prescribing physician. Verbal prompts must be delivered face-to-face and an assessment of the participant's functioning must be completed and documented. In cases where verbal prompts by phone are justified, they must be specifically prior authorized. ( )

b. Assisting the participant with maintaining or obtaining services that the participant usually takes care of for himself but is temporarily unable to do so because of an exacerbation of his symptoms. The targeted skills must be necessary to maintain his status in the home or community. ( )

c. Working with the participant's legal guardian immediately following the delivery of a mental health service in order to provide follow-up and support actions that facilitate the participant's positive response to the services. ( )

**034. ~~Group Psychosocial Rehabilitation (PSR)~~ Skill Training.** Group ~~PSR~~ skill training must be provided in accordance with the objectives specified in the individualized treatment plan. Group ~~PSR~~ skill training is a service provided to two (2) or more individuals concurrently. Group ~~PSR~~ skill training is reimbursable if provided by an agency with a current provider agreement and the agency staff person delivering the service meets the qualifications in accordance with Section 131 of these rules. This service includes one (1) or more of the following: (3-19-07)( )

a. Medication education groups provided by a licensed physician, licensed nurse, or a licensed practitioner of the healing arts within the scope of his practice under state law. This service focuses on educating participants about the role and effects of medications in treating symptoms of mental illness, ~~and symptom management, and skills for adhering to their medical regimen.~~ These groups must not be used solely for the purpose of group prescription writing; (3-19-07)( )

b. ~~Employment or school-related~~ Community Living skills groups ~~to~~ that focus on occupation-related symptom management-on the job or in school, symptom reduction, and education about skills related to appropriate job or school-related behaviors; (3-19-07)( )

c. Communication and interpersonal skills groups, the goals of which are to improve communication skills and facilitate appropriate interpersonal behavior; (3-19-07)

d. Symptom management groups to identify mental illness symptoms which are barriers to successful community integration, crisis prevention, problem identification and resolution, coping skills, developing support systems and planning interventions with teachers, employers, family members and other support persons; and (3-19-07)

e. Activities of daily living groups which help participants learn skills related to personal hygiene, grooming, household tasks, use of transportation, socialization, and money management. (3-19-07)

**045. Crisis Intervention Service.** Crisis support includes intervention for a participant in crisis situations to ensure his health and safety or to prevent his hospitalization or incarceration. Crisis intervention service is reimbursable if provided by an agency with a current provider agreement and the agency staff delivering the service meet the qualifications under Section 131 of these rules. A crisis may be precipitated by loss of housing, employment or reduction of income, risk of incarceration, risk of physical harm, family altercation or other emergencies. PSR agency staff may deliver direct services within the scope of these rules or ~~link~~ refer the participant to community resources to resolve the crisis or both. Crisis support may be provided prior to or after the completion of the assessment and service plan. Service is reimbursable if there is documentation that supports the need for the service and the individualized treatment is either authorized the next business day following the beginning of the crisis or prior authorized in anticipation of the need for crisis support. Crisis hours are authorized on a per incident basis. ~~(1-1-08)F(\_\_\_\_)~~

a. Crisis Support in a Community. Limitations to reimbursement in this place of service are described in Subsection 124 of these rules. (3-19-07)

b. Crisis Support in an Emergency Department. (3-19-07)

i. A service provided in a hospital emergency department as an adjunct to the medical evaluation completed by the emergency department physician. This evaluation may include a psychiatric assessment. (3-19-07)

ii. The goal of this service is to assist in the identification of the least restrictive setting appropriate to the needs of the participant. (3-19-07)

**056. Collateral Contact.** Collateral contact, as defined in Section 010 of these rules, is ~~covered by Medicaid if a reimbursable service when~~ it is included on the participant's individualized treatment plan and it is necessary to gather and exchange information, ~~provide interpretation or explanation of results of psychiatric evaluations, medical examinations and procedures, other accumulated data to family or other responsible persons,~~ with members of the participant's interdisciplinary team or advise them how to assist the participant. ~~(1-1-08)F(\_\_\_\_)~~

a. Collateral contact may be provided face-to-face by agency staff ~~qualified to deliver~~ providing treatment services. Face-to-face contact is defined as two (2) people meeting in person at the same time; or ~~(1-1-08)F(\_\_\_\_)~~

b. Collateral contact may be provided by telephone by agency staff ~~qualified to deliver~~ providing treatment services, when this is the most expeditious and effective way to exchange information. ~~(1-1-08)F(\_\_\_\_)~~

**067. Nursing Service.** A service performed by licensed and qualified nursing personnel within the limits of the Nurse Practice Act, Section 54-1402, Idaho Code. This may include supervision, monitoring, and administration of medications. (3-19-07)

**078. Psychotherapy.** Individual, group, and family psychotherapy must be ~~prior authorized and~~ provided in accordance with the objectives specified in the written individualized treatment plan, as described in Section 1145 of these rules. Staff qualified to deliver psychotherapy and qualified supervisors of psychotherapy are identified in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 707 through 718. ~~(1-1-08)F(\_\_\_\_)~~

~~08. Occupational Therapy. Occupational therapy services must be prior authorized by the Department, based on the results of an occupational therapy evaluation completed by a licensed Occupational Therapist in accordance with Subsections 131.11 and 140.08 of these rules. (1-1-08)F~~

**124. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - COVERAGE AND LIMITATIONS.**

The following service limitations apply to PSR services, unless otherwise authorized by the Department in each region. (3-19-07)

**01. Assessment.** ~~Any combination of evaluations or diagnostic services is limited to a maximum of six (6) hours annually.~~ Assessments must not exceed the following limits: (3-19-07)(\_\_\_\_)

**a. Intake Assessment.** One (1) hour per provider per participant; (\_\_\_\_)

**b. Comprehensive Diagnostic Assessment.** Four (4) hours per participant annually; (\_\_\_\_)

**c. Functional Assessment.** One (1) hour per provider per participant. (\_\_\_\_)

**02. Individualized Treatment Plan.** Two (2) hours per year per participant per provider agency are available for treatment plan development. (3-19-07)

**03. Psychotherapy.** Individual, family and group psychotherapy services are limited to a maximum of twenty-four (24) hours annually. Services beyond six (6) hours must be prior-authorized. (3-19-07)(\_\_\_\_)

**04. Crisis Intervention Service.** A maximum of twenty (20) hours of crisis support in a community may be reimbursed per crisis during any consecutive five (5) day period. Authorization must follow procedure described above at Subsection 123.04 of these rules. (1-1-08)T

**05. ~~Psychosocial Rehabilitation Skill Training.~~** ~~Any combination of PSR services excluding crisis hours are not to exceed twenty (20) hours per week and must be prior authorized by the Department. Services in excess of twenty (20) hours require additional review and prior authorization.~~ Services are limited to two (2) hours weekly. Up to five (5) additional weekly hours are available with prior authorization. (3-19-07)

**06. Community Reintegration.** Services are limited to three (3) hours weekly. Up to ten (10) additional weekly hours are available with prior authorization. (\_\_\_\_)

**067. Place of Service.** PSR agency services are to be home and community-based. (3-19-07)(\_\_\_\_)

**a.** PSR agency services must be provided to the participant in his home and community whenever possible. Any other location, including a provider's office or clinic, may be used if the specific place of service is stated in the individualized treatment plan and ~~is prior authorized~~ is medically necessary to maximize the impact of the service. (3-19-07)(\_\_\_\_)

**b.** PSR agency services may be provided to a participant living in a residential or assisted living facility if the PSR services are determined by the Department to be appropriate, desired by the resident, and are not the responsibility of the facility or another agency under the Negotiated Service Agreement for residential or assisted living facilities. (3-19-07)(\_\_\_\_)

**c.** Prior to delivering any services in a school-based setting, the PSR agency must have a contract with the school or the Infant Toddler program. The PSR agency 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)

**125. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - EXCLUDED SERVICES NOT REIMBURSABLE UNDER MEDICAID.**

Excluded services are those services that are not reimbursable under Medicaid PSR. The following is a list of those services: (3-19-07)

**01. Inpatient.** Treatment services rendered to participants residing in inpatient medical facilities including nursing homes, or hospitals, except those identified in Subsection 140.09 of these rules. (3-19-07)

02. **Recreational and Social Activities.** Activities which are primarily social or recreational in purpose. (3-19-07)
03. **Employment.** Job-specific interventions, job training and job placement services which includes helping the participant develop a resume, applying for a job, and job training or coaching. (3-19-07)
04. **Household Tasks.** Staff performance of household tasks and chores. (3-19-07)
05. **Treatment of Other Individuals.** Treatment services for persons other than the identified participant. (3-19-07)
06. ~~**Participant Staffing Within an Agency Services Primarily Available Through Other Community Agencies.** A participant staffing between two (2) staff who both provide PSR services within the same agency is not reimbursable. A participant staffing may fall under the definition of collateral contact when it is prior authorized and occurs between two (2) staff who are providing services from different Medicaid programs either within or outside the same agency. Any basic service for the provision of housing, education, social services, or transportation. The PSR agency staff should refer participants to other types of service agencies for these services.~~ (3-19-07)(\_\_\_\_)
07. **Medication Drops.** Delivery of medication only; (3-19-07)
08. **Services Delivered on an Expired Individualized Treatment Plan.** Services provided between the expiration date of one (1) plan and the start date of the subsequent treatment plan. (3-19-07)
09. **Transportation.** The provision of transportation services and staff time to transport. (3-19-07)
10. **Inmate of a Public Institution.** Treatment services rendered to participants who are residing in a public institution as defined in 42 CFR 435.1009. (3-19-07)
11. **Services Not Listed.** Any other services not listed in Section 123 of these rules. (3-19-07)
126. -- 127. **(RESERVED).**

**128. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - RESPONSIBILITIES OF THE DEPARTMENT.**

The Department will administer the provider agreement for the provision of PSR agency services and is responsible for the following tasks: (3-19-07)(\_\_\_\_)

01. **Credentialing.** The Department is responsible for ensuring Medicaid PSR agencies meet credentialing requirements described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 712. (3-19-07)

02. ~~**Individualized Treatment Plan Requirements Prior Authorization Process.** Individualized treatment plans must include the following: Reimbursement for specific services that require prior authorization will be authorized from the date the required documentation is received by the Department. The specific documentation that is required for prior authorization is dependent on the request for additional services.~~ (3-19-07)(\_\_\_\_)

- ~~**a. Required Documentation.** The required documentation for each individualized treatment plan includes:~~ (3-19-07)
- ~~i. Participant demographic information;~~ (3-19-07)
- ~~ii. A comprehensive assessment as provided in Section 113 of these rules;~~ (1-1-08)F
- ~~iii. A written individualized treatment plan as provided in Section 114 of these rules;~~ (1-1-08)F
- ~~iv. Adult treatment plans require a mental health client profile; and~~ (3-19-07)

~~v. Children's individualized treatment plans also require the Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). (3-19-07)~~

~~b. Receipt of Required Documentation. Reimbursement for services will be authorized from the date the individualized treatment plan and other required documentation are received by the Department. For the annual update, all required documentation must be received by the Department before the expiration date of the current assessment and plan. In order for a prior authorization to remain valid throughout the treatment plan year, documentation of the one hundred twenty (120) day reviews must comply with Subsection 136.05 of these rules. (3-19-07)~~

**ea.** Hours and Type of Service. The Department must authorize the number of hours and type of services which could be reasonably expected to lead to achievement of the individualized treatment plan objectives. (3-19-07)

~~4b.~~ Authorization Time Period. ~~Service~~ Prior authorizations are limited to a ~~twelve~~ six (6) month period and must be reviewed and updated ~~at least annually to continue.~~ (3-19-07)(\_\_\_\_)

**03. Notice of Decision.** At the point the Department makes a decision that a participant is ineligible for PSR agency services, a notice of decision citing the reason(s) the participant is ineligible for PSR agency services must be issued by the Department. The notice of decision must be sent to the adult participant and a copy to his legal guardian, if any. When the participant is a minor child, the notice of decision must be sent to the minor child's parent or legal guardian. (3-19-07)(\_\_\_\_)

**04. Increases in Individualized Treatment Plan Hours or Change in Service Type.** When the Department is notified, in writing, by the provider of recommended increases in hours or change in type of service provided, the Department must review the request and either approve or deny the request within ~~ten~~ fifteen (15) working days of receipt. A clear rationale for the increase in hours or change in service type must be included with the request. (3-19-07)(\_\_\_\_)

**05. Changes to Individualized Treatment Plan Objectives or Tasks.** When a provider believes that an individualized treatment plan needs to be revised without increasing hours or changing type of service, the provider should amend the individualized treatment plan at the time of the next one hundred twenty-day (120) review or when substantial changes in the participant's mental status or circumstances require immediate changes in the plan objectives. The amended individualized treatment plan must be retained in the participant's record and submitted to the Department upon request. (3-19-07)

**06. Service System.** The Department is responsible for the development, maintenance and coordination of regional, comprehensive and integrated service systems. (3-19-07)

## 129. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - PROVIDER RESPONSIBILITIES

**01. Provider Agreement.** Each provider must enter into a provider agreement with the Division of Medicaid for the provision of PSR agency services and also is responsible for the following tasks: (3-19-07)(\_\_\_\_)

**02. Service Provision.** Each provider must have signed additional terms to the general provider agreement with the Department. (3-19-07)

**03. Service Availability.** Each provider must assure provision of PSR agency services to participants on a twenty-four (24) hour basis. (3-19-07)(\_\_\_\_)

**04. Comprehensive Diagnostic Assessment and Individualized Treatment Plan Development.** The provider agency is responsible to conduct a comprehensive diagnostic assessment and develop an individualized treatment plan for each participant with input from the interdisciplinary team if these services have not already been completed by another provider. In the event the agency makes a determination that it cannot serve the participant, the agency must make appropriate referrals to other agencies to meet the participant's identified needs. (3-19-07)(\_\_\_\_)

**05. Individualized Treatment Plan.** The provider must develop an individualized treatment plan in accordance with Section 1145 of these rules. The signature of a physician, or other licensed practitioner of the healing arts within the scope of his practice under state law is required on the individualized treatment plan indicating the services are medically necessary. The date of the initial plan is the date it is signed by the physician. *Reimbursement for services will be authorized according to Subsection 128.02.b. of these rules.* (3-19-07)(\_\_\_\_)

**06. Changes to Individualized Treatment Plan Objectives.** When a provider believes that an individualized treatment plan needs to be revised, the provider should *include that recommendation and rationale in the documentation for the next one hundred twenty (120) day review* make those revisions in collaboration with the participant's interdisciplinary treatment team and obtain authorizing signatures. Amendments and modifications to the treatment plan objectives must be justified and documented in the medical record. (3-19-07)(\_\_\_\_)

**07. Effectiveness of Services.** Effectiveness of services, as measured by a participant's achievement of his plan objectives, must be monitored by the provider and changes to the individualized treatment plan must be initiated when service needs change or interventions are shown to be ineffective. These measures must be included on the participant's one hundred twenty (120) day review. (3-19-07)

**08. Healthy Connections Referral.** Providers must obtain a Healthy Connections referral if the participant is enrolled in the Healthy Connections program. (3-19-07)

### **130. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - PROVIDER AGENCY REQUIREMENTS.**

Each agency that enters into a provider agreement with the Department for the provision of PSR services must meet the following requirements: (3-19-07)

**01. Agency.** A PSR agency must be a proprietorship, partnership, corporation, or other entity, employing at least two (2) staff qualified to deliver PSR services under Section 131 of these rules, and offering both *PSR services direct* and administrative services. Administrative services may include such activities as billing, hiring staff, assuring staff qualifications are met and maintained, setting policy and procedure, payroll. (3-19-07)(\_\_\_\_)

**02. Criminal History Checks.** (3-19-07)

**a.** The agency must verify that all employees, subcontractors, or agents of the agency providing direct care or PSR services have complied with IDAPA 16.05.06, "Criminal History and Background Checks." (3-19-07)

**b.** Once an employee, subcontractor, or agent of the agency has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. (3-19-07)

**c.** Once an employee, subcontractor, agent of the agency has received a criminal history clearance, any additional criminal convictions must be reported to the Department when the agency learns of the conviction. (3-19-07)

**03. PSR Agency Staff Qualifications.** The agency must assure that each agency staff person delivering PSR services meets at least one (1) of the qualifications in Section 131 of these rules. (3-19-07)

**04. Additional Terms.** The agency must have signed additional terms to the general provider agreement with the Department. The additional terms must specify what *PSR direct* services must be provided by the agency. The agency's additional terms may be revised or cancelled at any time. (3-19-07)(\_\_\_\_)

**05. Agency Employees and Subcontractors.** Employees and subcontractors of the agency are subject to the same conditions, restrictions, qualifications and rules as the agency. (3-19-07)

**06. Supervision.** The agency must provide staff with adequate supervision to insure that the tasks on a participant's individualized treatment plan can be implemented effectively in order for the individualized treatment plan objectives to be achieved. Individuals in Subsection 131.08 through 131.121 of these rules must be supervised by individuals in Subsection 131.01 through 131.07 of these rules. (3-19-07)(\_\_\_\_)

**a.** Case-specific supervisory contact must be made weekly, at a minimum, with staff for whom supervision is a requirement. Documentation of supervision must be maintained by the agency and be available for review by the Department. (3-19-07)

**b.** An agency must assure clinical supervision is available to all staff that provide psychotherapy. The amount of supervision should be adequate to ensure that the individualized treatment plan objectives are achieved. Documentation of supervision must be maintained by the agency and be available for review by the Department. (3-19-07)

**c.** The physician must review and sign the individualized treatment plan as an indicator that the services are medically necessary and prescribed; and ( )

**07. Staff-to-Participant Ratio.** The following treatment staff-to-participant ratios for group treatment services must be observed: ( )

**a.** For children under six (6) years of age, the ratio must be 1:1. No group work is allowed. ( )

**b.** For children six (6) to twelve (12) years of age, the ratio must be 1:6 for groups. Group size must not exceed twelve (12) participants. ( )

**c.** For children over age twelve (12) years of age, the ratio must be 1:10 ratio for groups. Group size must not exceed twelve (12) participants. ( )

**08. Family Participation Requirement.** The following standards must be observed for services provided to children: ( )

**a.** For children under six (6) years of age, the participant's legal guardian must be present during the delivery of mental health services. The legal guardian does not have to participate in the treatment session, but must be present and available for consultation with the staff providing the service. Services are to be provided in the home whenever possible. ( )

**b.** For children six (6) to twelve (12) years of age, the participant's legal guardian must be actively involved. The legal guardian does not have to participate in the treatment session but must be available for consultation with the staff providing the service; ( )

**c.** For children over age twelve (12) years of age, the participant's legal guardian may participate as appropriate. If the interdisciplinary team recommends that the legal guardian not be involved in any aspect of the treatment, then the reasons for excluding the legal guardian must be documented in the medical record. ( )

**079. Continuing Education.** The agency must assure that all staff complete twenty (20) hours of continuing education annually from the date of hire. Four (4) hours every four (4) years must be in ethics training. Staff who are not licensed must select the discipline closest to their own and use the continuing education standards attached to that professional license. Nothing in these rules will affect professional licensing continuing education standards and requirements set by the Bureau of Occupational Licenses. (3-19-07)

**0810. Crisis Service Availability.** PSR agencies must provide twenty-four (24) hour crisis response services for their participants or make contractual arrangement for the provision of those services. (3-19-07)

**11. Restraints and Seclusion.** Restraints and seclusion must only be used when the participant's behavior poses a threat of physical harm to himself or others. If an agency intends to use restraints to deal with maladaptive participant behavior the following conditions must be in place: ( )

**a.** Use of physical prompts, restraints, and seclusion to manage maladaptive participant behavior must be incorporated into the participant's individualized treatment plan. ( )

**b.** The agency must develop and implement written policies and procedures outlining: ( )

- i. Medical necessity of restraints: ( )
- ii. Conditions or triggers which will prompt use of restraints: ( )
- iii. Type(s) of restraints which will be used: ( )
- iv. How long a restraint may be used: ( )
- v. Treatment staff in the clinic who will be authorized to employ restraints: ( )
- vi. The training or certification of staff qualified to employ restraints: ( )
- vii. How the agency will monitor use of restraints so as to not result in physical, mental, or emotional injury to the participant; and ( )
- viii. Agency notification requirements for use of restraints to include notification of the participant's parent or legal guardian, and physician. ( )
- c. The agency will complete an incident report for each use of restraints documenting the following: ( )
  - i. Type of restraint: ( )
  - ii. Restraint start time: ( )
  - iii. Triggering condition or behavior: ( )
  - iv. Staff member employing restraint: ( )
  - v. Restraint end time: ( )
  - vi. Participant response to the restraint intervention; and ( )
  - vii. Alternate methods attempted and results prior to the use of restraints or seclusion. ( )
- d. Following the use of restraints or seclusion, a behavior modification plan must be developed by a qualified staff person and approved by the interdisciplinary team. ( )
- e. Restraints or seclusion cannot be used for punishment, staff convenience, or lack of staff's ability to manage the participant's behavior. ( )
- f. Adversive techniques or interventions are not allowed under any circumstances. ( )

**0912. Building Standards, Credentialing and Ethics.** All PSR agencies must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 712 and Subsection 714.14. PSR agencies whose participants are in the agency building for any reason and any amount of time must follow the rules in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsections ~~712 and~~ 714.15. (3-19-07)( )

**131. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - AGENCY STAFF QUALIFICATIONS.**  
All agency staff delivering *PSR* direct services must meet at least one (1) of the following qualifications: (3-19-07)( )

**01. Licensed Physician or Psychiatrist.** A physician, psychiatrist, or other licensed practitioners of the healing arts within the scope of his practice under state law must be licensed in accordance with Title 54, Chapter 18, Idaho Code, to practice medicine. A licensed practitioner of the healing arts in Idaho may include Physician Assistants and Nurse Practitioners. (3-19-07)



**02. Licensed Master's Level Psychiatric Nurse.** A certified psychiatric nurse, Clinical Nurse Specialist or Psychiatric Nurse Practitioner, must be licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. (3-19-07)

**03. Licensed Psychologist.** A psychologist must be licensed in accordance with Title 54, Chapter 23, Idaho Code. (3-19-07)

**04. Licensed Clinical Professional Counselor or Licensed Professional Counselor.** A clinical professional counselor or professional counselor must be licensed in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (3-19-07)

**05. Licensed Marriage and Family Therapist or Licensed Associate Marriage and Family Therapist.** A marriage and family therapist must be licensed in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (3-19-07)(\_\_\_\_)

**06. Licensed Masters Social Worker or Licensed Clinical Social Worker.** A masters social worker (LMSW) or clinical social worker (LCSW), must hold a license in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (3-19-07)

**07. Clinician.** A clinician must hold a master's degree, be employed by a state agency and meet the minimum standards established by the Idaho ~~State~~ Division of Human Resources and the Idaho Department of Health and Welfare Division of Human Resources. (3-19-07)(\_\_\_\_)

**08. Licensed Social Worker.** A social worker must hold a license in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (3-19-07)

**09. Licensed Professional Nurse (RN).** A licensed professional nurse or RN, must be licensed in accordance with Title 54, Chapter 14, Idaho Code. (3-19-07)

~~**10. Psychosocial Rehabilitation (PSR) Specialist.** A PSR specialist must hold at least a bachelor's degree from a nationally accredited university or college in behavioral science, education, or medicine. A PSR specialist must have at least twenty one (21) semester credit hours (or quarter hour equivalent) in human service fields such as psychology, social work, special education, counseling, and psychosocial rehabilitation. An individual who has been denied licensure, or who is qualified to apply for licensure to the State of Idaho, Bureau of Occupational Licenses in the professions identified in Subsections 131.01 through 131.10 of this rule, is not eligible to provide services under the designation of Psychosocial Rehabilitation Specialist. Individuals approved as PSR specialists under previous rules in this section will be able to continue as qualified PSR specialists as long as they continue to work in the same agency as they did prior to the effective date of this rule. (3-19-07)~~

~~**11. Licensed Occupational Therapist.** An occupational therapist must be licensed in accordance with Title 54, Chapter 37, Idaho Code, and IDAPA 22.01.09, "Rules for the Licensing of Occupational Therapists and Occupational Therapist Assistants." Training and experience in a mental health setting are required. (3-19-07)~~

**120. Psychologist Extender.** A psychologist extender must work under the supervision of a licensed psychologist and be registered with the Bureau of Occupational Licenses. A copy of that registration must be retained in the extender's personnel file. (3-19-07)

**11. Psychosocial Rehabilitation (PSR) Specialist.** (\_\_\_\_)

**a.** As of June 30, 2009, persons who are working as PSR Specialists delivering Medicaid-reimbursable mental health services may continue to do so until January 1, 2012, at which time they must be certified as PSR Specialists in accordance with USpra requirements. (\_\_\_\_)

**b.** As of July 1, 2009, applicants to become PSR Specialists delivering Medicaid-reimbursable mental

health services must either have: ( )

i. The training, education, and experience required to sit for the USPRA PSR Specialist certification examination; or ( )

ii. A bachelor's degree from a nationally-accredited university in Primary Education, Special Education, Adult Education, Counseling, Human Services, Early Childhood Development, School Psychology, or a Masters degree in Psychology. ( )

c. As of January 1, 2012, all PSR Specialists delivering Medicaid-reimbursable mental health services must be certified in accordance with USPRA requirements. ( )

132. -- 135. (RESERVED).

**136. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - RECORD REQUIREMENTS FOR PROVIDERS.**

In addition to the development and maintenance of the individualized treatment plan, the following documentation must be maintained by the provider of PSR services: (3-19-07)

**01. Name.** Name of participant. (3-19-07)

**02. Provider.** Name of the provider agency and the agency staff person delivering the service. (3-19-07)

**03. Date, Time, Duration of Service, and Justification.** Documentation of the date, time, and duration of service, and the justification for the length of time which is billed must be included in the record. (3-19-07)

**04. Documentation of Progress.** The written description of the service provided, the place of service, and the response of the participant must be included in the progress note. A separate progress note is required for each contact with a participant. (3-19-07)

**05. ~~One Hundred Twenty Day Treatment Plan Review.~~** A documented review of progress toward each individualized treatment plan goal and objective must be kept in the participant's file. These reviews should occur intermittently, but not more than one hundred twenty (120) days apart. (~~3-19-07~~)( )

a. A copy of the review must be sent to the Department upon request. Failure to do so may result in the loss of a prior authorization or result in a recoupment of reimbursement provided for services delivered after the ~~one hundred twenty (120) day~~ intermittent staffing review due date. (3-19-07)( )

b. The review must also include a reassessment of the participant's continued need for services. The review must occur at least every one hundred twenty (120) days and be conducted in visual contact with the participant. For children, the review must include a new CAFAS/PECFAS for the purpose of measuring changes in the participant's functional impairment. (3-19-07)( )

c. After eligibility has been determined, subsequent CAFAS/PECFAS scores are used to measure progress and functional impairment and should not be used to terminate services. (3-19-07)

**06. Signature of Staff Delivering Service.** The legible, dated signature, with degree credentials listed, of the staff person delivering the service. (3-19-07)

**07. Choice of Provider.** Documentation of the participant's choice of provider must be maintained in the participant's file prior to the implementation of the individualized treatment plan. (3-19-07)

**08. Closure of Services.** A discharge summary must be included in the participant's record and submitted to the Department identifying the date of closure, reason for ending services, progress on objectives, and referrals to supports and other services. (3-19-07)

**09. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments ~~with the Medicaid service coordinator for any purpose~~, transporting participants, or documenting services. For services paid at the fifteen (15) minute incremental rate, providers ~~will not be reimbursed for more than one (1) contact during a single fifteen (15) minute time period~~ must comply with Medicaid billing requirements. (3-19-07)(\_\_\_\_)

137. - 139. (RESERVED).

**140. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - PROVIDER REIMBURSEMENT.**

Payment for PSR agency services must be in accordance with rates established by the Department. The rate paid for services includes documentation. (3-19-07)(\_\_\_\_)

**01. Duplication.** Payment for services must not duplicate payment made to public or private entities under other program authorities for the same purpose. (3-19-07)

**02. Number of Staff Able to Bill.** Only one (1) staff member may bill for an assessment, individualized treatment plan, or case review when multiple PSR agency staff are present. (3-19-07)(\_\_\_\_)

**03. Medication Prescription and Administration.** Medication prescription and administration may be billed only by physicians and other medical staff qualified under Title 54, Chapter 18, Idaho Code. (3-19-07)

**04. Recoupment.** Billing for services and receiving reimbursement for services that were not rendered or failure to comply with these rules must be cause for recoupment of payments for services, sanctions, or both. (3-19-07)

**05. Access to Information.** Upon request, the provider must provide the Department with access to all information required to review compliance with these rules. Failure by the provider to comply with such a request must result in termination of the Medicaid PSR Provider Agreement. (3-19-07)

**06. Evaluations and Tests.** Evaluations and tests may be provided as a reimbursable service in conjunction with the assessment. (3-19-07)

**07. Psychological Evaluations.** Psychological evaluations are reimbursable if provided in accordance with the requirements in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 707 through 718. (3-19-07)

~~**08. Evaluations by Occupational Therapists.** Evaluations performed by qualified licensed occupational therapists, performed in conjunction with development of an individualized treatment plan are reimbursable. (3-19-07)~~

~~**09. Psychiatric or Medical Inpatient Stays.** Community reintegration ~~S~~services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those services included in the responsibilities of the inpatient facility. Treatment services are the responsibility of the facility. (3-19-07)(\_\_\_\_)~~

~~**10. Reimbursement for Services Provided in a School.** PSR Services provided by a PSR agency in a school-based setting, must be billed by the school district, charter school, or the Idaho Infant Toddler program. (3-19-07)~~

141. - 145. (RESERVED).

**146. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - QUALITY OF SERVICES.**

The Department must monitor the quality and outcomes of PSR agency services provided to participants, in coordination with the Divisions of Medicaid, Management Services, and Behavioral Health. (3-19-07)(\_\_\_\_)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.20 - RULES GOVERNING ELECTRONIC PAYMENTS OF PUBLIC**  
**ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT**

**DOCKET NO. 16-0320-0801**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective dates of the temporary rule are October 1, 2008 and December 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and the 2008 Farm Bill, P.L. 110-234, Section 4114; US H.R. 2419.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 two changes to this chapter of rule:

1. The 2008 Farm Bill changes the number of days that a participant receiving food stamps will have access to benefits. Due to this change in federal code, the number of days that must pass before a participant's account is expunged needs to be increased in the rule. The current administrative rule allows a cash assistance participant the same number of days that must pass before their account is expunged as a food stamp participant. In order to remain consistent, the Department is increasing the period for cash assistance to match that for food stamps. This change will benefit both those participants receiving cash assistance and food stamps. Effective date is October 1, 2008.
2. The Department is changing the process of issuing electronic payment (EP) cards. EP cards will be replaced with branded cards, such as Visa, for child support recipients. This action by the Department confers a benefit to recipients by allowing the convenience of using child support funds for all aspects of child support. This change will allow the recipient to use the Visa card at additional locations than are currently available with the EBT card. Effective date is December 1, 2008.

This chapter of rule will also be updated to meet the current requirements of the Office of Administrative Rules (OAR) and the formatting and plain language standards required by the Department.

**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: Federal mandates require this rule change and it confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**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 of this rule change is a savings of approximately \$200,000. This amount has already been adjusted out of the Department's FY09 appropriation budget.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking to meet federal mandates that confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Orié Garcia at (208) 334-5820.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0320-0801**

**16.03.20 - ~~RULES GOVERNING~~ ELECTRONIC PAYMENTS OF PUBLIC ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT**

**001. TITLE AND SCOPE.**

**01. Title.** These rules are known and will be cited as Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "~~Rules Governing~~ Electronic Payments of Public Assistance, Food Stamps, and Child Support." (4-5-00)(10-1-08)T

**02. Scope.** These rules provide standards for delivery of food stamps, cash public assistance, and child support payments. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEAL.**

Administrative Appeals shall be governed by ~~Idaho Department of Health and Welfare Rules~~ the provisions of, IDAPA 16.05.03, "~~Rules Governing Contested Case Proceedings and Declaratory Rulings.~~" (4-5-00)(10-1-08)T

**004. ~~(RESERVED)~~ INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference in this chapter of rules. (10-1-08)T

**005. ~~IDAHO ELECTRONIC PAYMENTS (EP) - CASH AND FOOD STAMPS OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEB SITE.~~**

~~The Idaho Electronic Payment (EP) system meets the requirements for the distribution of government benefits set forth in the QUEST Operating Rules as adopted and amended by the National Automated Clearing House Association (NACHA). EP for the Food Stamp and cash public assistance programs is exempt from Regulation E (relating to Electronic Fund Transfers) of the Board of Governors of the Federal Reserve System. Participants are~~

~~solely liable for unauthorized fund use except those initiated fraudulently by an employee of the state of Idaho, the Vendor or its employee or subcontractor.~~ (4-5-00)

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-08)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-08)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-08)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-08)T

**05. Internet Web Site.** The Department's internet web site is found at <http://www.healthandwelfare.idaho.gov>. (10-1-08)T

**~~006. IDAHO ELECTRONIC PAYMENTS – CHILD SUPPORT CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.~~**

~~Child Support Services (CSS) uses the Electronic Payment (EP) system to disburse child support payments. Participants are solely liable for the first fifty dollars (\$50) of unauthorized fund use, except those initiated fraudulently by an employee of the state of Idaho, the Vendor, or its employee or subcontractor.~~ (4-5-00)

**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." (10-1-08)T

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (10-1-08)T

**~~007. ACCESSING BENEFITS AND PAYMENTS.~~**

~~Participants in the Food Stamp, cash public assistance, and Child Support programs in Idaho access their benefits and payments through the Idaho Electronic Payment (EP) system. Participants use an Electronic Payments (EP) card and secret personal identification number (PIN) to access benefits and payments.~~ (4-5-00)

~~008~~. -- 009. (RESERVED).

**010. DEFINITIONS.**

**01. Alternate Payee.** A person or agency other than the participant, who is issued an ~~EP~~ Idaho Quest EBT card and PIN, and is authorized to access the participant's account. This term includes any of the following: (10-1-08)T

- a.** An authorized household member; (10-1-08)T
- b.** Authorized representative; (10-1-08)T
- c.** Guardian/conservator; (10-1-08)T
- d.** A person who has Limited Power of Attorney for an Idaho Quest EBT card account; (10-1-08)T
- e.** Parent of a minor child participant; or (10-1-08)T
- f.** A protective payee. (4-5-00)(10-1-08)T

**02. Authorized Household Member.** A household member issued an EP Idaho Quest EBT card and PIN number, and authorized to access the primary card holder's benefit account. ~~(4-5-00)~~(10-1-08)T

**03. Authorized Representative.** A person who is not a member of a Food Stamp participant's household, authorized in writing by a participant to access a Food Stamp benefit account ~~in~~ on behalf of the participant. The authorized representative is issued an EP Idaho Quest EBT card and PIN. ~~(4-5-00)~~(10-1-08)T

**04. Automated Teller Machine (ATM).** A machine used to withdraw cash and provide card holders with account balance information. (4-5-00)

**05. Branded Visa Card.** A branded debit Visa card is a card offered by the Department as an alternative method for receiving cash payments. A branded debit Visa card will be issued by the vendor and can be used wherever Visa is accepted. Both PIN and signature based transactions are allowed. The card can be used to make purchases and receive cash back at point of sale (POS) machines. The card also may be used to access cash at ATM locations. (12-1-08)T

**056. Customer Service Center (CSC).** A toll-free telephone service provided by the EP Vendor to help the participant with use of the EP Idaho Quest EBT card or Visa branded card and provide other customer services. This service is available twenty-four (24) hours a day, seven (7) days a week. ~~(4-5-00)~~(12-1-08)T

**067. Department.** The Idaho Department of Health and Welfare. (7-1-98)

**078. EP Idaho Quest EBT Card Account.** An authorization ~~file~~ account maintained by the Vendor on behalf of a card holder. An EP Idaho Quest EBT card account ~~will be~~ is either a Food Stamp account or a cash account. A Food Stamp account can be used to make food purchases. A cash account can be used to make cash withdrawals or purchases. ~~(4-5-00)~~(10-1-08)T

**082. Guardian.** This term includes the guardian of a person, the conservator, or the guardian for public assistance. (7-1-98)

~~0910.~~ **Limited Power of Attorney for Electronic Payments Idaho Quest EBT Card Accounts.** A person with no legal interest in a participant's cash account who is authorized to access that account on the participant's behalf. The limited power of attorney for ~~Electronic Payments~~ Idaho Quest EBT Card Accounts must be authorized by notarized signature on a Department form. ~~(4-5-00)~~(10-1-08)T

**101. Personal Identification Number (PIN).** A four (4) digit secret number issued to or selected by the EP card holder. The PIN is used with the card to initiate ~~an~~ EP transaction. ~~(4-5-00)~~(10-1-08)T

~~112.~~ **Point of Sale (POS) Terminal.** An electronic device located at retail outlets through which card holders can conduct ~~EP Food Stamp and cash~~ electronic transactions ~~with their EP card and PIN.~~ ~~(4-5-00)~~(10-1-08)T

**123. Protective Payee.** This term includes a residential habilitation agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," or its employees, affiliated habilitation providers or contractors who are designated as payee on behalf of the agency's consumer. This term also includes a person or agency designated by the Social Security Administration as the representative payee for an AABD participant's Social Security or SSI payment. (4-5-00)

**134. Vendor.** A contractor hired by the Idaho Department of Health and Welfare to deliver financial services, including origination of Automated Clearing House (ACH) transactions, electronic transactions, customer service, and settlement services. (4-5-00)

~~011--029: (RESERVED):~~

**03011. ABBREVIATIONS.**

**01. AABD.** Aid to the Aged, Blind, and Disabled. (7-1-98)

- 02.**     **ACH.** Automated Clearing House. (7-1-98)
- 03.**     **ATM.** Automated Teller Machine. (7-1-98)
- 04.**     **EBT.** Electronic Benefits Transfer. (10-1-08)T
- ~~**045.**~~   **EP.** Electronic Payment. (4-5-00)
- ~~**056.**~~   **PIN.** Personal Identification Number. (7-1-98)
- ~~**067.**~~   **POS.** Point of Sale. (7-1-98)
- ~~**078.**~~   **SSI.** Supplemental Security Income. (7-1-98)
- ~~**089.**~~   **TAFI.** Temporary Assistance for Families in Idaho. (7-1-98)

~~**031. -- 099.**~~    **(RESERVED).**

**012. -- 049.**     **(RESERVED).**

**050.     IDAHO ELECTRONIC PAYMENTS (EP) - CASH AND FOOD STAMPS.**

The Idaho Electronic Payment (EP) system meets the requirements for the distribution of government benefits set forth in the QUEST Operating Rules as adopted and amended by the National Automated Clearing House Association (NACHA). EP for the Food Stamp and cash public assistance programs is exempt from Regulation E (relating to Electronic Fund Transfers) of the Board of Governors of the Federal Reserve System. Participants are solely liable for unauthorized fund use except those initiated fraudulently by an employee of the state of Idaho, the Vendor or its employee or subcontractor. (10-1-08)T

**051.     IDAHO ELECTRONIC PAYMENTS - CHILD SUPPORT.**

Child Support Services (CSS) uses the Electronic Payment (EP) system to disburse child support payments. Participants are solely liable for the first fifty dollars (\$50) of unauthorized fund use, except those initiated fraudulently by an employee of the state of Idaho, the Vendor, or its employee or subcontractor. (10-1-08)T

**052.     ACCESSING BENEFITS AND PAYMENTS.**

Benefits and cash payments for Food Stamp, cash public assistance, and Child Support programs are processed through the Idaho Electronic Payment (EP) system. Participants use an Idaho Quest EBT card to access food stamps. For cash public assistance and child support payments, participants can access payments through the Idaho Quest EBT card, direct deposit to their personal bank account, or through a branded Visa card. (12-1-08)T

**053. -- 099.**     **(RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**130.     EXPUNGEMENT -- CASH ASSISTANCE AND FOOD STAMPS.**

A cash or Food Stamp ~~EP~~ Idaho Quest EBT card account will be expunged if the account has not had any debit activity in ~~two~~ three hundred ~~seventy~~ sixty-five (270365) consecutive days. The participant loses any right to the cash or Food Stamps in the expunged account. (~~4-5-00~~)(10-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**132.     ESCHEATMENT.**



Child support payments will be escheated yearly if not accessed in three hundred and sixty-five (365) days. Escheatment is the process of taking funds from a custodial parent's Idaho Quest EBT card debit account when the account has not been debited for a year or more. The funds that remain in the account are considered abandoned property. The financial institution that has contracted with the Department is required to forward the abandoned funds to the Department. The Department will forward the abandoned funds to the State Tax Commission's Unclaimed Property Division on an annual basis. (10-1-08)T

~~132. -- 139. (RESERVED).~~

~~140. **CONVERSION OF FOOD STAMP BENEFIT ACCOUNT BALANCES.**~~

~~When a participant moves to an area where EP benefits cannot be used, the Department will convert all unused Food Stamp benefits to a cash benefit account.~~ (4-5-00)

~~143. -- 199. (RESERVED).~~

**200. CARD ISSUANCE.**

EP Idaho Quest EBT cards may be issued though the mail by the Vendor or over the counter at a Department field office. Branded Visa cards are issued by the Vendor through the mail. (4-5-00)(12-1-08)T

~~201. -- 209. (RESERVED).~~

**210. DAMAGED, LOST, OR STOLEN CARDS.**

The primary card holder, and any additional card holder, is responsible to immediately report the loss, damage, or theft of his EP Idaho Quest EBT card and branded Visa card to the Vendor's CSC. The card holder is responsible to report to the CSC or the Department suspected unauthorized use of the his card or unauthorized access of the EP his account. When the CSC receives a report of a lost, stolen or damaged EP card, the EP card will be deactivated canceled. The primary card holder is solely responsible for the protection of his EP card, and PIN, and for access to his EP account, by alternate payees. (4-5-00)(12-1-08)T

~~211. -- 234. (RESERVED).~~

**235. PRIMARY CARD HOLDER.**

The primary card holder is the individual whose client identification number is used to establish an account. An individual who is a guardian, a parent of a minor child, a protective payee, or a person granted limited power of attorney because the participant is unable to use his EP card may also be the primary card holder in lieu of the person whose client identification number is used on the card account. The primary card holder has primary responsibility for a benefit account. A primary card holder other than the participant is responsible for the participant's EP benefit account transactions. This person accepts and exercises responsibility over the participant's EP benefit account. The participant shall not be issued an EP card when the primary card holder is a person other than the participant, whose client identification number is used to establish the account. (4-5-00)(12-1-08)T

~~236. -- 239. (RESERVED).~~

**240. ADDITIONAL CARD HOLDERS.**

An additional card holders is are responsible for account transactions made on behalf of the primary card holder. An additional card holder may be an authorized household member, an authorized representative, or a person acting as limited power of attorney for Quest. (4-5-00)(12-1-08)T

**01. Additional Card Holders for EP Cash Account.** The primary card holder may designate ~~an~~ additional card holders for ~~an~~ EP cash account. (4-5-00)(12-1-08)T

**02. Additional Card Holders for EP an Idaho Quest EBT Food Stamp Account.** The primary card holder or another responsible member of the benefit household may designate ~~an~~ additional card holders for an EP Idaho Quest EBT Food Stamp account. (4-5-00)(12-1-08)T

~~241. (RESERVED).~~

**242. ~~DEACTIVATING CANCELING AN EP IDAHO QUEST EBT CARD.~~**

An ~~EP Idaho Quest EBT~~ card ~~must can~~ only be ~~deactivated canceled~~ by the Vendor's CSC or the Regional ~~EP EBT~~ Specialist. A card holder may request ~~deactivation of his own~~ card or the card of an authorized family member, ~~or~~ his authorized representative, ~~or the person acting as his limited power of attorney, to be canceled.~~ ~~The participant may request deactivation of the card held by his limited power of attorney for EP.~~ An ~~EP~~ card must not be ~~deactivated canceled~~ at the request of a participant who is not the primary card holder. ~~A group home's EP card must not be deactivated at the request of a Food Stamp participant.~~ (4-5-00)(12-1-08)T

**243. -- 299. (RESERVED).**

**300. PERSONAL IDENTIFICATION NUMBER (PIN) ISSUANCE.**

~~The PIN is randomly assigned by the Vendor if the EP card is issued through the mail.~~ A participant ~~issued an EP will select a PIN for an Idaho Quest EBT card issued over the counter will select a PIN.~~ The participant may change his PIN at a Department office, ~~or~~ by contacting the CSC, ~~or through the on-line client website.~~ (4-5-00)(12-1-08)T

**301. -- 309. (RESERVED).**

**310. LOST, FORGOTTEN OR COMPROMISED PINS.**

A cardholder may request a new PIN by contacting the CSC or the Department if the original PIN has been lost, forgotten, or compromised. ~~A cardholder can reset his PIN if he knows his old PIN through the on-line client website.~~ (7-1-98)(12-1-08)T

**311. -- 319. (RESERVED).**

**320. PIN SECURITY.**

The ~~EP~~ card holder is responsible for maintaining the security of his PIN. The card holder will be provided with training ~~and/or~~ training materials, ~~or both~~ that explain the use of the PIN and how to protect the PIN. The ~~EP~~ card will be automatically inactivated for ~~up to twenty-four (24) hours~~ the remainder of the calendar day after four (4) incorrect PIN entries. ~~The card holder is solely responsible for a~~ Access to his ~~EP~~ account through unauthorized use of his PIN is solely the responsibility of the card holder. (4-5-00)(12-1-08)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO**

**DOCKET NO. 16-0322-0801**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 39-3305, Idaho Code.

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

**FRIDAY - OCTOBER 17, 2008 - 2:00 pm**

**DEPARTMENT OF HEALTH & WELFARE**  
**Medicaid Office - Conference Room D-East**  
**3232 Elder Street, Boise, 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:

Advocates for residents of residential care and assisted living facilities have concerns with disclosure and clarity of marketing and billing materials provided by the facilities. In order to provide residents with informative information, requirements are being added to clarify the documentation needed prior to admission. The changes to these rules will provide better consumer protection by having clear, easy to understand fee schedules and billing information.

The changes include allowing termination of services when charges increase without notice or when a change in the resident's condition requires added services that increase costs, provide documentation requirements for pricing and billing, to allow ala carte billing of basic services and supplies for private pay residents, and to provide other consumer protection information to residents.

**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 67-5220, Idaho Code, negotiated rulemaking was conducted with stakeholders, advocacy groups, and the Idaho Health Care Association, Idaho Center for Assisted Living Association, and the Community Care Council throughout the year. A Notice of Intent to Promulgate a Rule - Negotiated Rulemaking was not published in the Idaho Administrative Bulletin because stakeholders were notified through other means of communication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jamie Simpson at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET 16-0322-0801**

**003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.**

**01. Administrative Appeals and Contested Cases.** Administrative appeals and contested cases are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-06)

**02. Informal Dispute Resolution Meeting.** If a facility disagrees with a deficiency cited for a core issue, it may request an informal dispute resolution meeting ~~to the Bureau of Facility Standards~~. The policy and procedure for requesting informal dispute resolution ~~is~~ **are** posted on the Licensing and Survey Agency website ~~at~~ <http://www.facilitystandards.idaho.gov> <http://www.assistedliving.dhw.idaho.gov>. (~~3-30-06~~)(    )

**004. INCORPORATION BY REFERENCE.**

The documents, referenced in Subsection 004.01 through 004.08 of these rules, are incorporated by reference as provided by Section 67-5229 (a), Idaho Code. These incorporated documents are available for public review upon request at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702, or when available on line at the websites provided in these rules. (3-30-06)

**01. National Fire Protection Association (NFPA) Documents.** The NFPA documents referenced in these regulations are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908; 1-800-344-3555; and online at <http://www.nfpa.org>. (3-30-06)

**02. Idaho Diet Manual.** This manual is available from the Idaho Dietetic Association, Ninth Edition, 2005, online at <http://eatrightidaho.org>. (3-30-06)

**03. Idaho Food Code.** IDAPA 16.02.19, "Food Safety and Sanitation Standards For Food Establishments," April 6, 2005. These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa16/0219.pdf>. (3-30-06)

**04. Americans with Disabilities Act Accessibility Guidelines.** 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is 1-800-514-0301. (3-30-06)

**05. Idaho Board of Nursing Rules.** IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa23/23index.htm>. (3-30-06)

**06. Idaho Board of Pharmacy Rules.** IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy." These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa27/27index.htm>. (3-30-06)

**07. International Building Code.** Edition 2003. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: 888-422-7233 and online at <http://www.iccsafe.org>. (3-30-06)

**08. Idaho Medical Assistance Program Rules.** IDAPA 16.03.~~09~~10, "Medicaid ~~Basic~~ Enhanced Plan

Benefits,” Section ~~665320~~. These rules may be found online at <http://adm.idaho.gov/adminrules/rules/idapa16/030910.pdf>. (3-30-06)( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- 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. (3-30-06)

**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. (3-30-06)

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (3-30-06)

**04. Telephone.** (208) 334-5500. (3-30-06)

**05. Internet Website Address.** The Department Internet website address is: <http://www.healthandwelfare.idaho.gov>. (3-30-06)

**06. Licensing and ~~Survey Agency~~ Certification Location.** The ~~Department's~~ Licensing and ~~Survey Agency~~ Certification unit is located at 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. (3-30-06)( )

**07. Licensing and ~~Survey Agency~~ Certification Website.** ~~<http://www.facilitystandards.idaho.gov>~~ <http://www.assistedliving.dhw.idaho.gov>. (3-30-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.**

**01. Fee Schedule.** A price list specifying the cost for services and supplies the facility plans to charge a resident who resides in the facility. The fee schedule includes, charges for room, board, basic services and assistance, optional services and assistance, supplies and conveniences, and accompanying assessment, formula or methodologies used to calculate charges. ( )

**02. Follow-Up Survey.** A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

**023. Functional Abilities Assessment.** An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

**034. Governmental Unit.** The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

**045. Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

**056. Hands On.** Physical assistance to the resident beyond verbal prompting. (3-30-06)

**067. Hourly Adult Care.** Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)

- ~~078.~~ **Immediate Danger.** Any resident is subject to an imminent or substantial danger. (3-30-06)
- ~~089.~~ **Inadequate Care.** When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)
- ~~0910.~~ **Incident.** An event that can cause a resident injury. (3-30-06)
- ~~101.~~ **Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Survey Agency. (3-30-06)
- a.** Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. (3-30-06)
- b.** Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)
- c.** Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)
- d.** An injury due to resident-to-resident incident. (3-30-06)
- e.** An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. (3-30-06)
- ~~112.~~ **Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)
- ~~123.~~ **Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)
- ~~134.~~ **Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)
- ~~145.~~ **License.** A permit to operate a facility. (3-30-06)
- ~~156.~~ **Licensing and Survey Agency.** The ~~section of the~~ Department unit also known as Licensing and Certification that is responsible for licensing, and surveying residential care or assisted living facilities. ~~(3-30-06)( )~~
- ~~167.~~ **Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)
- ~~178.~~ **Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)
- ~~189.~~ **Medication Assistance.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)

~~192~~. **Medication Dispensing.** The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)

~~201~~. **Medication, Self-Administration.** The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)

~~212~~. **Mental Disorders.** Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)

~~223~~. **Mental Illness.** Refers collectively to all diagnosable mental disorders. (3-30-06)

~~234~~. **Monitoring Visit.** A visit by a representative of the Licensing and Survey Agency for the purpose of assuring residents are not in immediate danger. (3-30-06)

~~245~~. **Neglect.** Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)

~~256~~. **Negotiated Service Agreement.** The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)

~~267~~. **Non-Core Issue.** Any finding of deficiency that is not a core issue. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. ADMISSION POLICIES.**

**01. Admissions.** Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)

**a.** The purpose, quantity and characteristics of available services; (3-30-06)

**b.** Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)

**c.** Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)

**d.** Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed at [http://www.isp.state.id.us/identification/sex\\_offender/public\\_access.html](http://www.isp.state.id.us/identification/sex_offender/public_access.html). (3-30-06)

**e.** Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)

**02. Fee Schedule Description.** A written description of ~~how fees will be handled by~~ the facility's fee schedule and how the resident's charges will be calculated. The following descriptions must be included in the policy: (3-30-06)( )

**a.** How the fee schedule is explained and disclosed to the resident, resident's legal guardian, conservator, or responsible party prior to a deposit payment or execution of the admissions agreement; ( )

**b.** How the resident, resident's legal guardian, conservator, or responsible party is notified of changes to the fee schedule and how notification is documented. ( )

c. How an increase in fees that are a result of the resident's needs for increased services are communicated and documented to the resident, resident's legal guardian, conservator, or responsible party, and how those charges are billed. ( )

**03. Resident Funds Policies.** When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)

a. A statement if the facility does not manage resident funds. (3-30-06)

b. If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)

**04. Resident Admission, Discharge, and Transfer.** The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)

**05. Policies of Acceptable Admissions.** Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)

a. A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)

b. No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)

i. A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)

ii. A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)

iii. A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; (3-30-06)

iv. A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)

v. A resident who is on a mechanically supported breathing system, except for residents who use CPAP, (continuous positive airway pressure); (3-30-06)

vi. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)

vii. A resident who is fed by a syringe; (3-30-06)

viii. A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)

ix. A resident with a Stage III or IV pressure ulcer; (3-30-06)

x. A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)

xi. A resident who has MRSA (methicillin-resistant staphylococcus aureus) in an active stage



- (infective stage). (3-30-06)
- c.** For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)
- d.** A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)
- e.** A resident that is violent or a danger to himself or others; (3-30-06)
- f.** Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)
- g.** Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)
- h.** Until July 1, 2010, Waivered Level 3 Small Facilities will be exempt from complying with the requirements under Subsection 152.05.g. of this rule, including the requirement to have at least a residential fire sprinkler system. On July 1, 2010, all Waivered Level 3 Small Facilities that admit or retain residents who are incapable of self-evacuation will be required to comply with the requirements under Subsection 152.05.g. of this rule. This includes being equipped with at least an operable residential fire sprinkler system. Any facility sold prior to July 1, 2010, must meet the requirements under Subsection 403.03 of these rules before a new license will be issued. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. REQUIREMENTS FOR ADMISSION AGREEMENTS.**

Prior to or on the day of admission, the facility and each resident or the resident's legal guardian or conservator will enter into a written admission agreement that is understandable and clear, and easily understood. The admissions agreement must be translated into a language the resident or his representative understands. The agreement must be signed by all involved parties. The admission agreement may be integrated within the Negotiated Service Agreement as described in Section 320 of these rules, provided that all requirements for the Negotiated Service Agreement and admission agreement are met. Admission agreements must include all items described under Subsections 220.01 through 220.135 of ~~these~~ this rules. (3-30-06)(\_\_\_\_\_)

- 01. Services Provided.** Services the facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self-help skills, recreational activities, and provisions for trips to social functions. (3-30-06)
- 02. Staffing.** Staffing patterns and qualification of staff on duty during a normal day. (3-30-06)
- 03. Notification of Liability Insurance Coverage.** The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing. (3-30-06)
- 04. Medication Responsibilities.** The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis. (3-30-06)
- 05. Resident Personal Fund Responsibilities.** Who is responsible for the resident's personal funds. (3-30-06)

06. **Resident Belongings Responsibility.** Responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility.

(3-30-06)

07. **Fee Schedule Description and Emergency Transfers.** The facility must provide an easily understood fee schedule in clear and unambiguous language with description and conditions under which emergency transfers will be made that fully disclose charges the resident will incur under normal circumstances and conditions that will cause charges to increase.

(3-30-06)( )

a. ~~Arrangement for payments;~~ A Medicaid resident's fee schedule must include a statement that the resident's share of liability is calculated by the Department.

(3-30-06)( )

b. ~~How a partial month's resident fees are to be refunded when a resident no longer resides in the facility;~~ The fee schedule must include the accompanying assessments, formulas, or point systems used to calculate the resident's charges and cannot exceed twenty (20) pages.

(3-30-06)( )

c. ~~Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the following situations;~~ The fee schedules must include payment terms.

(3-30-06)( )

i. ~~In the case of the resident's death, fifteen (15) days notice is required. The date of death begins the fifteen (15) days notice requirement; and~~

(3-30-06)

ii. ~~In the case of an emergency condition that requires a resident's transfer, fifteen (15) days notice is required. The date of transfer starts the fifteen (15) days notice requirement.~~

(3-30-06)

08. **Resident Permission to Transfer Information.** Permission to transfer information from the resident's records to any facility to which the resident transfers.

(3-30-06)

09. **Resident Responsibilities.** Resident responsibilities, as appropriate.

(3-30-06)

10. **Restrictions on Choice of Care or Service Providers.** Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider.

(3-30-06)

11. **Advance Directive.** Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel.

(3-30-06)

12. **Notification of Payee Requirements.** Notification if the facility requires as a condition of admission that the administrator or an employee of the facility be named as payee; and

(3-30-06)( )

13. ~~Other Information. Other information that the facility may deem appropriate.~~ **Emergency Transfers.** The facility must provide the following:

(3-30-06)( )

a. Descriptions of the conditions under which an emergency transfer will be made as described in Section 221 of these rules.

( )

b. The number of days, if any, the resident will be charged for after he has left the facility due to an emergency transfer.

( )

14. **Termination of Payment Obligation.**

( )

a. In the case of the resident's death, the facility cannot charge for more than fifteen (15) days after death, unless the resident's belongings are not removed.

( )

b. In the case of an emergency transfer, the facility cannot charge for more than fifteen (15) days after

transfer, unless the resident's belongings are not removed. ( )

**15. Conditions for Termination of the Admission Agreement.** The facility's admission agreements must include the conditions for termination of the agreement as described in Section 221 of these rules. ( )

**221. REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.**

**01. Conditions for Termination of the Admission Agreement.** The admission agreement cannot be terminated, except under the following conditions: (3-30-06)

**a.** Giving the other party thirty (30) calendar days written notice for any reason; (3-30-06)

**b.** The resident's death; (3-30-06)

**c.** Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; (3-30-06)

**d.** The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.05 of these rules; (3-30-06)

**e.** Nonpayment of the resident's fees; (3-30-06)

**f.** When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; or (3-30-07)

**g.** Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. (3-30-06)

**h.** When a resident's condition changes, the resident's monthly rate may be increased by the facility with less than thirty (30) days notice. The resident can terminate the admissions agreement upon the receipt of the rate increase notice without the required thirty (30) day notice. ( )

**02. Facility Responsibility During Resident Discharge.** The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. (3-30-06)

**03. Resident's Appeal of Involuntary Discharge.** A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. (3-30-06)

**a.** Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. (3-30-06)

**b.** This notice must be in writing and in a language and manner the resident or his representative can understand. (3-30-06)

**04. Written Notice of Discharge.** The written notice of discharge must include the following: (3-30-06)

**a.** The reason for the discharge; (3-30-06)

**b.** Effective date of the discharge; (3-30-06)

**c.** A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; (3-30-06)

- d.** The name and address of where the appeal must be submitted; (3-30-06)
  - e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and (3-30-06)
  - f.** The name, address and telephone number of CO-AD, for residents with developmental disabilities or mental illness. (3-30-06)
  - g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. (3-30-06)
  - h.** When the notice does not contain all the above required information, the notice is void and must be reissued. (3-30-06)
- 05. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.**

Each facility must provide at no additional cost to the resident: (3-30-06)

**01. Common Shared Furnishings.** Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas; all items must be in good repair, clean, and safe. (3-30-06)

**02. Resident Sleeping Room Furnishings.** Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room; all items must be in good repair, clean, and safe. (3-30-06)

**03. Resident Bed.** Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, folding beds, or double bunks are prohibited. Bed springs must be in good repair; and clean and comfortable. Bed mattresses must be standard for the bed, clean and odor free. A pillow must be provided. (3-30-06)

**04. Resident Telephone Privacy.** The facility must have at least one (1) telephone that is accessible to all residents. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. (3-30-06)

**05. Basic Services.** The following are basic services to be provided by the facility ~~at no additional cost to the resident:~~ room, board, activities of daily living services, supervision, assistance and monitoring of medications laundering of linens owned by the facility, coordination of outside services, arrangement for emergency transportation, emergency interventions, first aid, housekeeping services, maintenance, utilities, and access to basic television in common areas. ~~(3-30-06)(\_\_\_\_\_)~~

**06. Basic Supplies.** ~~The following are to be supplied by the facility at no additional cost to~~ The facility at no additional cost to must have the following items on hand for the residents as needed: linens, towels, wash cloths, soap, shampoo, comb, hairbrush, toilet paper, sanitary napkins, first aid supplies, electric razors or other means of shaving, toothbrush, and toothpaste. ~~(3-30-06)(\_\_\_\_\_)~~

**a.** The facility must regularly provide these supplies to clients for the Department at no additional cost. \_\_\_\_\_

**b.** The facility can bill private pay residents for use of supplies provided by the facility. ( )

**c.** Residents may choose to purchase their own supplies rather than use those supplied by the facility. ( )

**07. Resident Furnishings.** If a resident chooses to provide his own furnishings, the facility must assure that the resident's furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of this rule. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. REQUIREMENTS FOR NOTICE OF ~~MONTHLY CHANGE TO FEE INCREASE~~ SCHEDULE.**

**01. Notification of Change.** The resident or resident's legal guardian, ~~or~~ conservator, or responsible party must be notified in writing of any increase change in the facility's monthly rates fee schedule at least thirty (30) calendar days prior to such a raise the change taking effect. (~~3-30-06~~)( )

**02. Rates for Services.** A change in the resident's condition may require the facility to change services immediately. A thirty (30) day notice is not required when change in services and associated fees increase are due to change in the resident's condition. The facility must immediately notify the resident, guardian, conservator, or responsible party of the change in condition and associated fees increase. The facility must notify the resident, guardian, conservator, or responsible party in writing of the change of services and associated fee increase within seven (7) days of the resident's change of condition. ( )

**501. -- 504. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**506. REQUIREMENT FOR UNIFORM DISCLOSURE STATEMENT.**

The facility must provide the Department-designated uniform disclosure statement to each person who requests information about the facility. The admission agreement, the fee schedule, and the uniform disclosure statement are required to be provided to all potential residents prior to admissions to the facility. ( )

**5067. -- 509. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. REQUIREMENTS FOR RESIDENTS' RIGHTS.**

The administrator must assure that policies and procedures are implemented to assure that residents' rights are observed and protected. (3-30-06)

**01. Resident Records.** The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. (3-30-06)

**a.** A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; (3-30-06)

**b.** Written acknowledgement that the resident has received copies of the rights; (3-30-06)

**c.** A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; (3-30-06)

**d.** Information about any specific health problems of the resident that may be useful in a medical emergency; (3-30-06)

**e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (3-30-06)

**f.** Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and (3-30-06)

**g.** The current admission agreement between the resident and the facility. (3-30-06)

**02. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups. (3-30-06)

**03. Humane Care and Environment.** (3-30-06)

**a.** Each resident has the right to humane care and a humane environment, including the following: (3-30-06)

i. The right to a diet that is consistent with any religious or health-related restrictions; (3-30-06)

ii. The right to refuse a restricted diet; and (3-30-06)

iii. The right to a safe and sanitary living environment. (3-30-06)

**b.** Each resident has the right to be treated with dignity and respect, including: (3-30-06)

i. The right to be treated in a courteous manner by staff; (3-30-06)

ii. The right to receive a response from the facility to any request of the resident within a reasonable time; and (3-30-06)

iii. The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. (3-30-06)

**04. Personal Possessions.** Each resident has the right to: (3-30-06)

**a.** Wear his own clothing; (3-30-06)

**b.** Determine his own dress or hair style; (3-30-06)

**c.** Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and (3-30-06)

**d.** Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. (3-30-06)

**05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for their personal use, the difference between their total income and the applicable board and care allowance established

by Department rules. (3-30-06)

- a. A facility must not require a resident to deposit his personal funds with the facility; and (3-30-06)
- b. Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. (3-30-06)

**06. Management of Personal Funds.** Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: (3-30-06)

- a. The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a non-interest bearing account or petty cash fund; (3-30-06)
- b. The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and (3-30-06)
- c. Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. (3-30-06)

**07. Access and Visitation Rights.** Each facility must permit: (3-30-06)

- a. Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; (3-30-06)
- b. Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; (3-30-06)
- c. Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and (3-30-06)
- d. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (3-30-06)

**08. Employment.** Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. (3-30-06)

**09. Confidentiality.** Each resident must have the right to confidentiality of personal and clinical records. (3-30-06)

**10. Freedom from Abuse, Neglect, and Restraints.** Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. (3-30-06)

**11. Freedom of Religion.** Each resident must have the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others. (3-30-06)

**12. Control and Receipt of Health-Related Services.** Each resident must have the right to control his

receipt of health related services, including: (3-30-06)

**a.** The right to retain the services of his own personal physician, dentist, and other health care professionals; (3-30-06)

**b.** The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; (3-30-06)

**c.** The right to confidentiality and privacy concerning his medical or dental condition and treatment; and (3-30-06)

**d.** The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. (3-30-06)

**i.** The facility must document the resident and his legal guardian have been informed of the consequences of the refusal; and (3-30-06)

**ii.** The facility must document that the resident's physician or authorized provider has been notified of the resident's refusal. (3-30-06)

**13. Grievances.** Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. (3-30-06)

**14. Participation in Resident and Family Groups.** Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. (3-30-06)

**15. Participation in Other Activities.** Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. (3-30-06)

**16. Examination of Survey Results.** Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and Survey Agency with respect to the facility and any plan of correction in effect with respect to the facility. (3-30-06)

**17. Posting of Advocacy Groups.** The names, addresses, and telephone numbers of advocacy groups must be readily available in the facility with easy access for residents. Information for the following groups will be available: ( )

**a.** Local adult protection or advocacy group; ( )

**b.** Local ombudsman for the elderly, or long-term care; ( )

**c.** Co-Ad, Inc.; ( )

**d.** Idaho Attorney General Consumer Protection Division; ( )

**e.** Idaho Legal Aid Services Senior Legal Hotline; ( )

**f.** Idaho Alliance for Mental Illness; and ( )

**g.** The State Licensing and Certification Agency. ( )

**17g. Access by Advocates and Representatives.** A residential care or assisted living facility must permit advocates and representatives of community legal services programs, whose purposes include rendering



assistance without charge to residents, to have access to the facility at reasonable times in order to: (3-30-06)

- a. Visit, talk with, and make personal, social, and legal services available to all residents; (3-30-06)
- b. Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; (3-30-06)
- c. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; (3-30-06)
- d. Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; (3-30-06)
- e. Communicate privately and without restrictions with any resident who consents to the communication; and (3-30-06)
- f. Observe all common areas of the facility. (3-30-06)

**189. Access by Protection and Advocacy System.** A residential care or assisted living facility must permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. (3-30-06)

~~190.~~ **Access by the Long Term Care Ombudsman.** A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program," access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. (3-30-06)

**201. Transfer or Discharge.** Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. (3-30-06)

~~212.~~ **Citizenship Rights.** Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. (3-30-06)

~~223.~~ **Advanced Directives.** Residents have the right to be informed, in writing, regarding the formulation of an advanced directive to include applicable State law, Section 39-4510, Idaho Code. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. RESIDENT BUSINESS RECORDS.**

Resident business records must contain the records described in Subsection 705.01 through 705.07 of these rules. (3-30-06)

**01. Individual Responsible for Payment.** Name, address, and telephone number of the individual responsible for payment. (3-30-06)

**02. Written Admissions Agreement.** Written admission agreement that is signed and dated by the administrator, the resident, ~~or his~~ legal guardian, ~~or~~ conservator, or responsible party. (~~3-30-06~~)(\_\_\_\_)

**03. ~~Payment Fee~~ Schedule.** A copy of the ~~payment fee~~ schedule ~~and fee structure~~ signed and dated by the resident, ~~or his~~ legal guardian, ~~or~~ conservator, ~~if such is separate from the admission agreement~~ or responsible party prior to admission. (3-30-06)(    )

**04. Resident Rights.** A signed copy of the resident's rights as identified in Section 550 of these rules or a signed and dated statement that the resident or his legal guardian or conservator has read and understands his rights as a resident of the facility. (3-30-06)

**05. Completion of Admissions Process.** Name, title of the facility representative who completed the admission process with the resident, legal guardian, ~~or~~ conservator, or responsible party. (3-30-06)(    )

**06. Agreement to Handle Resident's Funds.** If the facility handles resident funds, there must be a signed and dated written agreement between the facility and the resident or the resident's legal guardian or conservator setting the terms. Documentation of each financial transaction at the time the transaction occurs with signatures by the administrator or his designee and the resident. (3-30-06)

**07. Emergency Condition Advisory.** Documentation indicating that the resident has been advised of actions required under emergency conditions. (3-30-06)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.04.16 - RULES GOVERNING THE DEPARTMENT OF ENERGY ADMINISTRATION  
WEATHERIZATION PROGRAM**

**DOCKET NO. 16-0416-0801 (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, and Part Q of the Energy Conservation in Existing Buildings Act, 42 U.S.C. 6861, et seq. by the U.S. Department of Energy Organization Act, 42 U.S.C. 1701, et seq.

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

**FRIDAY - OCTOBER 10, 2008 - 1:00 pm**

**DEPARTMENT OF HEALTH & WELFARE  
450 West State Street, Conference Rm. 7-A  
Boise, 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 chapter is being repealed in order to rewrite the chapter to align Idaho's rules with current federal regulations regarding the Weatherization Assistance Program governed by the U.S. Department of Energy. The rewrite of the chapter is published in this Administrative Bulletin under Docket No. 16-0416-0802.

**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 state general funds associated with this rulemaking. Funds for this program are provided by the U.S. Department of Energy.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**IDAPA 16.04.16 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.04.16 - WEATHERIZATION ASSISTANCE PROGRAM IN IDAHO**

**DOCKET NO. 16-0416-0802 (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, and Part Q of the Energy Conservation in Existing Buildings Act, 42 U.S.C. 6861, et seq. by the U.S. Department of Energy Organization Act, 42 U.S.C. 1701, et seq.

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Boise, 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 chapter of rules is being rewritten to align with current federal regulations regarding the Weatherization Assistance Program in Idaho governed by the U.S. Department of Energy. The current chapter is being repealed in this Bulletin under Docket 16-0416-0801.

The following changes in this chapter will align with federal and state regulations:

1. Update eligibility criteria to reference current federal poverty guidelines, and remove of outdated income tables and limitations;
2. Align allowable expenditures;
3. Update to current standards and techniques of weatherization materials and methods;
4. Align service delivery rules with current practice for labor and monitoring, including the addition for energy audits, weatherization material standards, and lead safety activities for homes where needed; and
5. Update definitions and other required sections to meet the Administrative Procedures Act.

**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 state general funds associated with this rulemaking. Funds for this program are provided by the U.S. Department of Energy.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET 16-0416-0802**

**IDAPA 16  
TITLE 04  
CHAPTER 16**

**16.04.16 - WEATHERIZATION ASSISTANCE PROGRAM IN IDAHO**

**000. LEGAL AUTHORITY.**

The Department of Health and Welfare has the authority to establish and enforce rules under Sections 56-202 and 56-203, Idaho Code, and to enter into contracts with the federal government to provide assistance to eligible individuals. This program is authorized by the U.S. Department of Energy, under Part A of the Weatherization Assistance for Low-Income Persons, 42 U.S.C. 6861-6872, and the Department of Energy Organization Act, 42 U.S.C. 1701.

( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 16.04.16, "Weatherization Assistance Program in Idaho."

( )

**02. Scope.** This chapter contains rules implementing a weatherization assistance program to assist low income persons established by the U.S. Department of Energy. This program was enacted as Title IV of the Energy Conservation and Production Act, P.L. 94-385, 90 Stat. 1125 et seq., and amended by Title II, Part 2, of the National Energy and Policy Conservation Act, 42 USC 6201, et seq., 42 USC 6301, et seq., and 42 USC 6401, et seq.

( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036 or at any of the Department's Regional Offices.

( )

**003. ADMINISTRATIVE APPEALS.**

Appeals and proceedings for any Department actions are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." An appeal does not stay the action of the Department.

( )

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference in this chapter of rule.

( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- 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.** Department Internet 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 Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. ( )

**02. Public Records.** The Department of Health and Welfare 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 exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS AND ABBREVIATIONS.**

For purposes of this chapter of rules, the following terms and abbreviations are used as defined. ( )

**01. Community Action Agency (CAA).** A private corporation or public agency established according to the Economic Opportunity Act of 1964, 42 USC 2701, et seq., which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance, and oversee anti-poverty programs. ( )

**02. Contractor.** A weatherization project entity at the sub-state level which receives a contract from the Department to carry out activities of this program. ( )

**03. Cosmetic Items.** Items which, when installed, will not reduce energy costs in a cost effective manner, such as finishes, decorative materials, elevation materials, aluminum siding, board and bat, clapboard, brick, shakes, or asphalt siding. ( )

**04. Department.** The Idaho Department of Health and Welfare or its designee. ( )

**05. DOE.** The U.S. Department of Energy. ( )

**06. Dwelling Unit.** A house, including a stationary mobile home, an apartment, a group of rooms or a single room occupied as separate living quarters. ( )

**a. Rental Dwelling Unit.** A dwelling unit occupied by a person who pays rent for use of the dwelling unit. ( )

**b. Single-Family Dwelling Unit.** A structure containing no more than one (1) dwelling unit. ( )

07. **Elderly Person.** A person who is sixty (60) years of age or older. ( )
08. **EPA.** The U.S. Environmental Protection Agency. ( )
09. **Family Unit.** All persons living together in a dwelling unit. ( )
10. **Grantee.** The Idaho Department of Health and Welfare. ( )
11. **Household.** All persons living together in a dwelling unit. ( )
12. **Heating or Cooling Sources.** A device which raises or lowers the temperature within a dwelling unit that is part of the permanent heating, ventilating and air-conditioning system installed in the dwelling unit. Examples of a heating or cooling system are: furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air-conditioners, fans, or solar devices. ( )
13. **Low-Income.** Income as it relates to family size which is: ( )
- a. At or below one hundred twenty-five percent (125%) of the poverty level as determined using criteria established by the Director of the Office of Management and Budget, or a higher level has been established by the Secretary and is necessary to carry out the purpose of this part and is consistent with the eligibility criteria established for the weatherization program under Section 222(a)(12) of the Economic Opportunity Act of 1964; ( )
- b. The basis on which cash assistance payments have been paid during the preceding twelve (12) month period under Titles IV and XVI of the Social Security Act, 42 USC 301, or applicable state or local law; or ( )
- c. The basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least one hundred and twenty-five (125) percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget. ( )
14. **Mechanical Equipment.** A control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit, and which will permanently be affixed to an existing heating or cooling source, such as flue dampers, clock thermostats, filters, and replacements limit switches. ( )
15. **Occupants.** A single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements. ( )
16. **Persons with Disabilities.** Any individual who is: ( )
- a. Handicapped as defined in Section 7(6) of the Rehabilitation Act of 1973; ( )
- b. Under a disability as defined in Section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in Section 102(7) of the Developmental Disabilities Services and Facilities Construction Act; or ( )
- c. Receiving benefits under Chapter 11 or 15 of Title 38, U.S.C. ( )
17. **Regional Representative.** A Regional Representative of the U.S. Department of Energy. ( )
18. **Secretary.** The Secretary of the U.S. Department of Energy. ( )
19. **Separate Living Quarters.** Living quarters in which the occupants do not live and eat with any other persons in the structure and have direct access from the outside of the building or through a common hall or complete kitchen facilities for the exclusive use of the occupants. The occupants may be related or unrelated persons who share living arrangements, and includes shelters for homeless persons. ( )
20. **Shelter.** A dwelling unit or units whose principal purpose is to house on a temporary basis

individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. ( )

**21. Subgrantee.** An entity managing a weatherization project which receives a grant or contract of funds awarded under this program from the Department or CAA. ( )

**22. Weatherization Project.** A project conducted in a single geographical area which undertakes to weatherize dwelling units which are energy inefficient. ( )

**23. Weatherization Materials.** Items used to improve the heating or cooling efficiency of a dwelling unit, such as: ( )

**a.** Caulking and weatherstripping of doors and windows; ( )

**b.** Furnace efficiency modifications which include replacement burners, furnaces, or boilers or any combination thereof; ( )

**c.** Devices for minimizing energy loss through heating system, chimney, or venting devices; ( )

**d.** Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and ( )

**e.** Cooling efficiency modifications that include replacement air conditioners, ventilation equipment, screening and window films, and shading devices. ( )

**011. -- 049. (RESERVED).**

**050. FEDERAL REQUIREMENTS.**

**01. Record Keeping.** Each subgrantee receiving federal financial assistance under the Weatherization Assistance Program must keep records as required by the DOE, which include the following: ( )

**a.** Records that fully disclose the amount and disposition by subgrantee of the funds received; ( )

**b.** The total cost of a weatherization project; ( )

**c.** The total expenditure to implement the weatherization plan for which such assistance was given or used; ( )

**d.** The source and amount of funds for such project or program not supplied by DOE and corresponding records; ( )

**e.** Documentation of the average costs incurred in weatherization of individual dwelling units; ( )

**f.** Documentation of the average size of the dwelling being weatherized; ( )

**g.** Documentation of the average income of households receiving assistance; and ( )

**h.** Records and documentation DOE finds necessary for an effective audit and performance evaluation as determined by the DOE Financial Assistance Rule, 10 CFR Part 600, and any requirements of 10 CFR Part 440, Direct Final Rule and EPA Title 40 Part 745.86. ( )

**02. Reports.** Each subgrantee receiving financial assistance under the Weatherization Assistance Program must provide the Department with: ( )

**a.** A monthly program performance report on Form EIA-29A "Low-Income Weatherization Quarterly Report Supplement;" and ( )



b. A monthly financial report on Form EIA-298 "Financial Status Report." ( )

**03. Matching Funds.** Financial assistance under the Weatherization Assistance Program will be used to supplement, and not to supplant, local funds, and to the maximum extent practicable as determined by DOE, to increase the amounts of local funds that would be made available in the absence of federal funds provided under the Program. ( )

**04. Program Coordination.** To the maximum extent practicable, the use of weatherization assistance must be coordinated with other federal, state, local, or privately funded programs in order to improve energy efficiency and to conserve energy. ( )

**051. FEDERAL REQUIREMENTS FOR LEAD SAFE PRACTICES.**

To protect against lead-based paint associated risks, the federal Environmental Protection Agency (EPA) requirements under 40 CFR 745 must be followed for all homes built before 1978, with the following exclusions: ( )

**01. Written Determination Renovation is Lead Free.** Renovations in housing in which a written determination has been made by an inspector or risk assessor (certified under either Federal regulations at 40 CFR 745.226 or a State or Tribal certifications program authorized pursuant to 40 CFR 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of one (1.0) milligrams/per square centimeter (1.0mg/cm<sup>2</sup>) or a half percent (0.5%) by weight, where the firm performing the renovation has obtained a copy of the determination. ( )

**02. Testing for Lead.** Renovations in housing facilities in which a certified renovator, using an EPA recognized test kit as defined in 40 CFR 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of one (1.0) milligrams/per square centimeter (1.0 mg/cm<sup>2</sup>) or a half percent (0.5%) by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repaired or refinished separately. ( )

**03. Emergency Renovation Information Distribution.** The information distribution requirements in 40 CFR 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage. Emergency renovations are not exempt from the cleaning requirements of 40 CFR 745.90(a)(5), which must be preformed by certified renovators or individuals trained in accordance with 40 CFR 745.90(b)(2), the cleaning verification requirements of 40 CFR 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 CFR 745.86(b)(6) and (b)(7). ( )

**04. Training.** The training requirements in 40 CFR 745.90 and the work practice standards for renovation activities in 40 CFR 745.85 apply to all renovations performed by the Weatherization Program, except: ( )

a. Renovations in housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. ( )

b. For the purposes of Section 051 of this rule, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence. ( )

**052. -- 099. (RESERVED).**

**100. MINIMUM PROGRAM REQUIREMENTS.**

**01. Dwelling Units Eligible for Weatherization.** A dwelling unit will be eligible under these rules if it is occupied by a family unit: ( )

**a.** Whose income is at or below one hundred twenty-five percent (125%) of the poverty level, as specified in Section 101 of this rule, determined in accordance with criteria established by the Director of the Office of Management and Budget; ( )

**b.** Which contains a member who had received cash assistance payments under Title IV or XVI of the Social Security Act or applicable state or local law paid during the twelve (12) months preceding the determination of eligibility for weatherization assistance, or ( )

**c.** Is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget. ( )

**02. Rental Dwelling Units Eligible for Weatherization.** A Subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance when: ( )

**a.** The subgrantee has obtained the written permission of the owner or his agent; ( )

**b.** Not less than sixty-six percent (66%) of the dwelling units in the building, or fifty percent (50%) for duplexes and four-unit buildings are eligible dwelling units, or will become eligible dwelling units within one hundred eighty (180) days under a federal, state, or local government program for rehabilitating the building or making similar improvements to the building; ( )

**c.** The grantee has established procedures for dwellings which consist of rental units to ensure that the benefits of the weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will benefit the low-income tenants residing in such units; ( )

**d.** For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit, including households paying for their energy through their rent, will not be subjected to rent increases unless those increases are related to matters other than the weatherization work performed. ( )

**e.** A subgrantee may weatherize shelters and to determine how many dwelling units exist in a shelter, a subgrantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit. ( )

**03. Documentation of Eligibility.** No dwelling unit can be weatherized without documentation that the dwelling unit is an eligible dwelling unit. The subgrantee must determine that the family unit is eligible using as proof any of the following: ( )

**a.** Wage stubs; ( )

**b.** Supplemental Security Income; ( )

**c.** Medicaid card; or ( )

**d.** W-2 Wage and Tax Statement. ( )

**04. Documents Unavailable.** If the documents listed in Subsections 100.03.a. through 100.03.d. of this rule are not available, the head of family must sign and date a declaration of income eligibility and provide it to the subgrantee identifying the following: ( )

- a. The family unit's name; ( )
- b. The family unit's address; ( )
- c. Their income level, per year or month; and ( )
- d. The sources from which the income is derived. ( )
- e. The subgrantee must spot check the information provided on at least ten percent (10%) of the declarations received to insure eligibility. ( )

**05. Proof of Documentation.** Copies of the proof documents are to be retained and made available by the subgrantee to the Department or its agents for inspection and audit for at least three (3) years. ( )

**101. POVERTY INCOME ELIGIBILITY LIMITS.**

Maximum income guidelines for the weatherization program are based on guidelines established for assistance under the Low Income Home Energy Assistance Act of 1981. ( )

**102. -- 199. (RESERVED).**

**200. ALLOWABLE EXPENDITURES.**

The items listed in Subsections 200.01 through 200.14 of this rule are allowable expenditures for the Weatherization Assistance Program. ( )

**01. Cost of Weatherization Materials.** The cost to purchase and deliver weatherization materials. ( )

**02. Labor Costs.** The following labor costs are allowable expenditures: ( )

a. Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and ( )

b. Payments to employ labor or to engage a contractor, particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services, provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other federal or state training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors. ( )

**03. Transportation of Materials, Tools, and Work Crews.** Transportation of weatherization material, tools, and work crews to a storage site and to the site of weatherization work. ( )

**04. Vehicle Maintenance, Operation, and Insurance.** Maintenance, operation, and insurance of vehicles used to transport weatherization materials. ( )

**05. Maintenance of Tools and Equipment.** ( )

**06. Cost of Vehicles.** Purchase of any vehicle must be referred to DOE for prior approval in every instance before cost of a vehicle is allowed as an expenditure. ( )

**07. Employment of On-Site Supervisory Personnel.** ( )

**08. Incidental Repairs.** The cost of incidental repairs if such repairs are necessary to make the installation of weatherization materials effective. ( )

**09. Cost of Liability Insurance.** The cost of liability insurance for weatherization projects for personal injury and for property damage; ( )

**10. Low-Cost Weatherization Activities.** The cost of carrying out low-cost/no-cost weatherization activities in accordance with 10 CFR Part 440.20. ( )

**11. Financial Audits.** The cost of weatherization program financial audits as required by 10 CFR Part 440.23(d). ( )

**12. Administrative Expenses.** Allowable administrative expenses under 10 CFR Part 440.18(d). ( )

**13. Leveraging Activities.** Funds used for leveraging activities in accordance with 10 CFR Part 440.14(b)(9)(xiv). ( )

**14. Elimination of Health and Safety Hazards.** The cost of eliminating health and safety hazards, elimination of which is necessary before, or because of, installation of weatherization materials. ( )

**15. Limitations.** No grant funds are awarded under the Weatherization Assistance Program when used for any of the following purposes: ( )

**a.** To install or otherwise provide weatherization materials for a dwelling unit which has been weatherized previously with grant funds authorized under these rules, except as provided under 10 CFR Part 440.20 low-cost or no-cost weatherization activities. If such dwelling unit has been damaged by fire, flood, or an act of God; and repair of the damage to weatherization materials is not paid for by insurance the Weather Assistance Program may award funds for repair. ( )

**b.** To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local program within twelve (12) months of the date weatherization of the dwelling unit would be scheduled to be completed. ( )

**c.** Dwelling units partially weatherized under 10 CFR Part 440 or under other federal programs during the period of September 30, 1975, through September 30, 1993, may receive further financial assistance for weatherization under 10 CFR Part 440. These homes must be reported separately, but may be counted as completions for the purposes of compliance with the per-home expenditure limit in 10 CFR Part 440.18. Each dwelling unit must receive a new energy audit which takes into account any previous energy conservation improvements to the dwelling. ( )

**d.** Cosmetic items as defined in Section 010 of these rules. ( )

**16. Additional Funds.** Additional funds for administration, tools, and transportation of materials, work crews, and equipment to work sites can be allocated by the Department on the basis of need and availability. ( )

**201. LOW-COST OR NO-COST WEATHERIZATION ACTIVITIES.**

**01. Low or No Cost Weatherization Activities.** An eligible dwelling unit may be weatherized without regard to the limitations contained in 10 CFR Part 440.18 (e)(2) or Section 440.21(b) from funds designated by the grantee for carrying out low-cost or no-cost weatherization activities provided. ( )

**a.** Inexpensive weatherization materials are used, such as water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weatherstripping, caulking, glass patching, and insulation for plugging; and ( )

**b.** No labor paid with funds provided under 10 CFR Part 440 is used to install weatherization materials referred to in paragraph (a)(1) of this section. ( )

**02. Maximum Amount for Low or No Cost Weatherization Activities.** A maximum of ten percent (10%) of the amount allocated to a subgrantee, not to exceed \$50 in materials costs per dwelling unit, may be expended to carry out low-cost or no-cost weatherization activities, unless the DOE Regional Representative

approves a higher expenditure per dwelling unit. ( )

**202. -- 299. (RESERVED).**

**300. WEATHERIZATION MATERIALS STANDARDS AND ENERGY AUDIT PROCEDURES.**

**01. Approved Weatherization Materials.** Only weatherization materials which meet or exceed standards prescribed in Appendix A to 10 CFR Part 440 may be purchased. However, unlisted materials may be approved by the state upon application from any CAA. Such application must be made to DOE by the state. ( )

**02. Cost Effective Materials.** Except for materials to eliminate health and safety hazards allowable under 10 CFR Part 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. ( )

**03. Energy Audit.** The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to 10 CFR Part 440. ( )

**301. -- 499. (RESERVED).**

**500. OVERSIGHT, TRAINING, AND TECHNICAL ASSISTANCE.**

**01. Audit Frequency.** The Department will ensure that audits by or on the behalf of subgrantees are conducted with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less frequently than every two years, in accordance with 10 CFR Part 600, and OMB Circular 110, Attachment F, as applicable. ( )

**02. Monitoring.** The Department, as grantee for the U.S. Department of Energy Weatherization Assistance Grants, will monitor and evaluate the operation of projects carried out by the subgrantees through on-site inspections and other means to insure the effective provision of weatherization assistance in a nondiscriminatory manner for dwelling units of low-income residents of the State of Idaho. ( )

**501. -- 999. (RESERVED).**

# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### 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 22, 2008, unless otherwise listed.  
(Temp & Prop) indicates that the Rule is both Temporary and Proposed.  
(\*PH) indicates that a Public Hearing has been scheduled for this docket.*

#### **IDAPA 02 - DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, ID 83701-0790**

**02-0104-0801, Rules Governing the Idaho Preferred® Promotion Program.** Defines product qualifications for meats; removes duplicate sample submission language required for logo use.

**\*02-0403-0801, Rules Governing Animal Industry.** (\*PH) Incorporates by reference the USDA's EVA Uniform Methods and Rules that outline biosecurity procedures for EVA, a viral disease of equids; adds EFA and a new form of equine herpes virus to State Veterinarian's Reportable Disease List; updates other documents incorporated by reference; defines ponies and zebras as equidae.

#### **02.04.21 - Rules Governing the Importation of Animals**

**02-0421-0801,** Updates and clarifies the import requirements for Canadian cattle and bison imported into Idaho including individual animal identification, CAN branding and import permit requirements.

**\*02-0421-0802,** (\*PH) Incorporates by reference the USDA's EVA Uniform Methods and Rules that outline biosecurity procedures for EVA, a viral disease of equids; updates other documents incorporated by reference; adds a method of genetic purity verification to the options for imported domestic cervidae; adds additional required documents for certification of the health of imported fish.

**\*02-0427-0801, Rules Governing the Importation of Animals.** (\*PH) Clarifies criteria and requirements for possessing and importing deleterious exotic animals; adds the following to the rule: definitions, requirements for obtaining permits, standards for construction of confinement areas, identification requirements, and record keeping requirements; amends the Deleterious Exotic Animals list.

**\*02-0609-0801, Invasive Species Rules.** (\*PH) New chapter determines which species are invasive in Idaho and establishes procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping.

#### **IDAPA 03 - STATE ATHLETIC COMMISSION 1109 Main St. Ste. 220, Boise, ID 83702**

**03-0101-0801, Rules of the State Athletic Commission.** Sets forth requirements for martial arts and mixed martial arts contests and outlines safety standards for combatants.

#### **IDAPA 06 - IDAHO BOARD OF CORRECTION 1299 N Orchard St., Suite 110, Boise, ID 83706**

**06-0101-0801P, Rules of the Board of Correction.** Notice of Proposed Proclamation updates rules to reflect current IDOC standards, practices, policies, and Board directives. (Rule effective 10-31-08)

**IDAPA 07 - DIVISION OF BUILDING SAFETY  
1090 E. Watertower St., Meridian, ID 83642**

**07-0203-0802, Rules Governing Permit Fee Schedule.** Provides for a permit fee for installing and inspecting gray and reclaimed water systems.

**07-0205-0801, Rules Governing Plumbing Safety Licensing.** Prohibits anyone from advertising to provide plumbing services who does not have a valid certificate (license); defines what activity constitutes advertising; requires those with a valid license to include their certificate of competency number in the advertisement.

**07-0303-0801, Rules for Modular Buildings.** Enumerates the actions that may subject manufacturers of modular buildings in Idaho, and others who may install them in Idaho, to civil penalties for violations of state law.

**07-0501-0802, Rules of the Public Contractors License Board.** Establishes financial and documentation requirements for Class Unlimited license applications; adds an exemption to bid cost requirements for Class Unlimited licenses.

**07-0701-0802, Rules Governing Installation of Heating, Ventilation, & Air Conditioning Systems.** Removes the color limitation on inspection tags by allowing a single sticker to be used for multiple inspections from multiple trades and allows flexibility in the placement of the tags.

**IDAPA 08 - STATE BOARD OF EDUCATION/DEPARTMENT OF EDUCATION  
PO Box 83720, Boise, ID 83720-0037**

**08-0104-0801, Rules Governing Residency Classification.** (Temp & Prop) Clarifies additional factors for establishing residency for tuition purposes at Idaho public postsecondary institutions.

**08.02.02 - Rules Governing Uniformity.**

**\*08-0202-0803, (\*PH)** Updates incorporation by reference of the Standards for Idaho School Buses and Operations and the Idaho Standards for the Initial Certification of Professional School Personnel.

**\*08-0202-0804, (\*PH)** Outlines procedures for certification to teach American Indian languages which include fingerprinting and a criminal history check.

**\*08-0202-0805, (\*PH)** Increases the time for required field experience to be in a K-12 setting at all grade levels for the school counselor endorsement; increases the minimum number of hours to 1,200 for the required internship for school psychologist endorsement.

**\*08-0202-0806, (\*PH)** Adds additional routes for endorsements for teachers through 3 options including traditional coursework through a college or university, National Board certification and through testing or assessment.

**\*08-0202-0807, (\*PH) (Temp & Prop)** Adds definitions; outlines process for obtaining required criminal history checks for applicants for certification, school district employees, substitute teachers, student teachers and individuals who have unsupervised contact with students in a K-12 setting.

**08.02.03 - Rules Governing Thoroughness.**

**\*08-0203-0803, (\*PH)** Implements the State Longitudinal Data System that assigns a unique student identifier to improve student tracking, identify trends, and provide accurate enrollment and demographic data.

**08-0203-0804, (Temp & Prop)** Changes first year limited English proficient (LEP) students requirement to take the standard achievement test for math and science; allows language scores on either the Fall or Spring 10th grade ISAT to be used for graduation purposes.

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS  
5535 W. Overland Road, Boise, ID 83705**

**10-0101-0801, Rules of Procedure.** Updates terminology; exempts a Ph.D degree from an independent evaluation of engineering education obtained outside US; clarifies that Board will not ask another jurisdiction to proctor exams; applicants who fail exam a second or subsequent time must comply with the requirements of HB 380.

**10-0102-0801, Rules of Professional Responsibility.** Updates terminology; removes ambiguity relating to sealing of documents; allows for Board disciplinary action if a licensee surrenders his license in another jurisdiction for reasons

that violate Idaho laws or rules.

**10-0103-0801, Rules of Corner Perpetuation and Filing.** Updates terminology; corrects Board's office address; clarifies that the corner record must include a sketch of the marks on a found monument.

**10-0104-0801, Rules of Continuing Professional Development.** Updates terminology; makes continuing professional development a condition of license renewal for P.E.; revises "self-study," "membership," and "active participation" as qualifying activities for continuing professional development; allows a licensee to opt for a 2-calendar year period of compliance rather than a renewal biennium; exempts a licensee on active duty temporarily assigned to a location other than the normal home station; and exempts professional engineers during their first renewal period or the 2-calendar year period closest to the renewal biennium.

**IDAPA 11 - IDAHO STATE POLICE  
700 S. Stratford Dr., Meridian, ID 83643**

**IDAHO STATE RACING COMMISSION**

**11.04.02 - Rules Governing Simulcasting**

**\*11-0402-0801, (\*PH)** (Temp & Prop) Chapter repeal.

**\*11-0402-0802, (\*PH)** (Temp & Prop) Chapter rewrite clarifies rules and more closely conforms them to the Association of Racing Commissioners International model rules.

**\*11-0402-0803, (\*PH)** (Temp & Prop) Defines "horse race" and "virtual horse" to promote virtual racing.

**\*11-0413-0801, Rules Governing the Racing Commission.** (\*PH) (Temp & Prop) New chapter aligns rules more closely to the international model rules.

**IDAHO PEACE OFFICERS STANDARDS AND TRAINING COUNCIL**

**11-1101-0801, Rules of the Idaho Peace Officer Standards and Training Council.** Changes requirement that a Canine Evaluator applicant's letter of recommendation come from an Idaho POST-certified canine evaluator to an agency administrator; evaluator must evaluate a minimum of four dogs every two years to retain certification; increases the training canine teams must complete to be POST-certified; establishes requirements for POST-certified canine instructors; removes general subjects of detention, dispatch, and K-9 from the list of high liability subjects for Master Instructor certification.

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION  
PO Box 25, Boise, ID 83707**

**13.01.04 - Rules Governing Licensing**

**13-0104-0801,** Allows a disabled applicant to self-certify that he or she is capable of holding or holding and firing, without assistance from other persons, legal hunting and fishing equipment; redefines 'physician'; streamlines lifetime license application process; allows reasonable accommodations for persons with disabilities in special weapon hunts; corrects citations.

**13-0104-0802,** Replaces term "handicapped" with "disabled" to be consistent with governing law.

**13-0104-0803,** Sets outfitter set-aside tags for 2008 seasons; sets outfitter allocation tags proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters; adds separate additional 1,500 white-tail deer nonresident tag quota; considers reducing the elk tag cap for Selway A and B tags for resident and nonresident hunters.

**13-0107-0801, Rules Governing the Taking of Upland Game Animals.** (Temp & Prop) Updates references to the Disabled Motor Vehicle Hunting Permit.

**13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho.**

**13-0108-0801,** Allows hunting of wolves pursuant to seasons set by the Commission.

**13-0108-0802,** Allows use of "red dot" scopes on crossbows by disabled archers; allows senior and disabled hunters to apply for leftover youth controlled hunt permits; simplifies evidence-of-sex rule to apply only during transportation of a big game carcass to a final place of storage or a Commercial meat processing facility; removes obsolete rules for bighorn sheep hunters.

**13-0108-0803,** Would allow the use of in-line muzzleloaders in muzzleloader-only hunts.

**\*13-0108-0804P, (\*PH)** Notice of Proclamation establishing seasons and limits for big game hunting.



**13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho.**

**13-0109-0801**, Extends youth pheasant hunt season; revises Wildlife Management Area pheasant program hunter-orange rule; increases turkey controlled hunt tags for general and youth only; expands general season youth hunt; corrects terminology and deletes obsolete rules.

**\*13-0109-0802P**, (\*PH) Notice of Proclamation establishing seasons and limits for waterfowl hunting.

**\*13-0109-0803P**, (\*PH) Notice of Proclamation establishing seasons and limits for upland game birds, including turkey.

**13.01.11 - Rules Governing Fish**

**13-0111-0801**, Amends the two-pole permit rule to comply with governing law.

**13-0111-0802**, Sets the 2008-2009 fishing seasons and regional exceptions; removes general 12 inch minimum size limit on bass in North Idaho waters (Salmon River and north); restricts use of live leeches, frogs, salamanders and shrimp as bait; increases maximum size of traps and seines for minnows and crayfish.

**\*13-0111-0803P**, (\*PH) Notice of Proclamation establishing seasons and limits for fishing.

**\*13-0113-0801P**, **Rules Governing the Taking of American Crow in the State of Idaho.** (\*PH) Notice of Proclamation establishing seasons and limits for crow hunting in Idaho.

**\*13-0114-0801P**, **Rules Governing Falconry in the State of Idaho.** (\*PH) Notice of Proclamation establishing seasons and limits for hunting by falconry in Idaho.

**13.01.16 - Rules Governing the Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.**

**13-0116-0801**, Increases otter harvest quotas in the Magic Valley and Upper Snake Regions; closes beaver trapping on Willow Creek drainage in Units 66 and 69; increases beaver trapping opportunity in the Southeast and Magic Valley Regions; and amends the list of Wildlife Management Areas open to trapping.

**\*13-0116-0802P**, (\*PH) Notice of Proclamation establishing seasons and takes for unprotected species and predator hunting and trapping and hunting of furbearers in Idaho.

**13-0117-0801**, **Rules Governing the Use of Bait for Taking Big Game Animals.** Clarifies the use of bait containers for bear hunting and their required removal at the end of each season.

**13-0119-0801**, **Rules for Operating, Discontinuing, and Suspending Vendors.** Deletes obsolete terminology used in the computerized licensing system and rules concerning reimbursement of telecommunication costs; amends supply ordering rules; requires vendors to provide their own ISP; addresses document cancellation procedures using IWILD system.

**13-0120-0801**, **Selection Rules of New Fish and Game License Vendors.** Simplifies and streamlines application process to improve response time to applicants; reduces active vendor ceiling number.

**IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

1109 Main St. Ste. 220, Boise, ID 83702

**14-0101-0801**, **Rules of Procedure of the Board of Registration of Professional Geologists.** (Temp & Prop) Changes the application for registration deadline date to 90 days prior to exam; moves fees and license renewal provisions to new section in rule.

**IDAPA 15 - OFFICE OF THE GOVERNOR  
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED  
PO Box 83720, Boise, ID 83720-0012**

**15-0202-0801**, **Vocational Rehabilitation Services.** Changes education expenses payments to 90% of actual costs at in-state institutions; changes books and supplies payments to actual costs; increases payments for transportation costs; and increases bioptics to \$900.

**DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15-0401-0801 - Rules of the Division of Human Resources and Idaho Personnel Commission.** (Temp & Prop) Numerous changes conform rule to statutory changes; deletes obsolete and redundant definitions and language; updates references to "department" and "administrator"; defines "key employee," "merit increase matrix," and

"military duty"; updates rules on preference, examination and placement on registers of veterans; amends rules on calculation of pay, work hours, bonuses and shift differential; adds moving expense reimbursement; updates sick leave rule and bone marrow and organ donor leave with pay; deletes medical/dental appointment leave, election leave, and earned administrative leave; defines compensable hours and hours worked; and deletes requirement that each agency adopt human resource policies on specified topics.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16-0224-0801, *Clandestine Drug Laboratory Cleanup.*** Clarifies clandestine drug lab cleanup and clearance processes; amends process used by law enforcement for reporting contaminated properties.

**\*16-0226-0801, *Rules Governing the Idaho Children's Special Health Program.*** (\*PH) Adds full range of medical foods to the program-funded PKU diet; reduces fees charged to adult Idahoans with PKU; and switches family sliding fee scale co-pays to a pre-service payment business model.

**16-0301-0802, *Eligibility for Health Care Assistance for Families and Children.*** (Temp & Prop) Allows wages to be paid by the Census Bureau to low income individuals for temporary employment related to U.S. Census activities without jeopardizing their Medicaid benefits.

**16-0303-0802, *Rules Governing Child Support Services.*** (Temp & Prop) Implements federal DRA requirement to review at least every 36 months all child support enforcement cases in which recipients also receive Title IV-A (TANF) benefits.

**16-0304-0803, *Rules Governing the Food Stamp Program in Idaho.*** (Temp & Prop) Removes cap on dependent care expense; increases amounts of allowed assets based on inflation; expands excluded retirement accounts and excludes two new education accounts from asset test; increase minimum food stamp benefit; deletes references to food stamp coupons; rewrites Able Bodied Adults Without Dependents program to restart the 3-year period; clarifies when Department must act upon unemployment insurance information; excludes Individual Development account as a resource.

**16-0305-0802, *Eligibility for Aid to the Aged, Blind, and Disabled.*** (Temp & Prop) Allows wages to be paid by the Census Bureau to individuals eligible for AABD assistance for temporary employment related to U.S. Census activities without jeopardizing their Medicaid benefits.

**16-0308-0803, *Temporary Assistance for Families in Idaho.*** Clarifies eligibility requirements for optional and mandatory individuals and the SSN requirement; defines caretaker relative and family unit; modifies immunization requirement; amends resource and income exclusions; removes one-time cash payment option; increases maximum TAFI cash assistance grant amount; and limits number of TAFI cash assistance to one grant per family per month.

**16.03.09 - Medicaid Basic Plan Benefits**

**\*16-0309-0801, (\*PH)** (Temp & Prop) Provides criteria for eligibility, types of treatment services to be covered, and any limitations for substance abuse services.

16-0309-0802, Clarifies credentialing terminology and credentialing criteria for new and existing providers of mental health clinic services.

**16-0309-0803, (\*PH)** Clarifies which therapy services providers can be enrolled and reimbursed as Medicaid providers and when Medicare certification is required; extends required physician recertification period for a therapy services plan of care; changes to mental health program help minimize duplication and overlap of services, better match mental health benefits to participant's needs, and ensure proper use of resources and service delivery by qualified providers.

**16.03.10 - Medicaid Enhanced Plan Benefits**

**16-0310-0801, (\*PH)** Changes reimbursement for providers from flat rate to 15-minute increments; ensures participants have a single service coordinator and that providers can't self-refer; modifies time frame for service coordination during the participant's transition from an institution; modifies requirements for assessment and monitoring activities; clarifies provider qualifications and participant eligibility.

**16-0310-0802, (\*PH)** Clarifies how reimbursement rates for nursing facilities are calculated; removes specific dates and refers to the rate base year; factors for determining a distressed facility include an annual review, prospective

application, and a determination on a facility-by-facility basis.

**16-0310-0803**, (\*PH) Changes to mental health program help minimize duplication and overlap of services, better match mental health benefits to participant's needs, and ensure proper resource use and service delivery by qualified providers.

**16-0320-0801, Rules Governing Electronic Payments of Public Assistance, Food Stamps, and Child Support.** (Temp & Prop) Increases the period for cash assistance to match that for food stamps; changes process of issuing electronic payment (EP) cards and replaces EP cards with branded cards, such as Visa, for child support recipients.

**\*16-0322-0801, Residential Care or Assisted Living Facilities in Idaho.** (\*PH) Allows termination of services when charges increase without notice or when a resident's condition requires added services that increase costs; provides documentation requirements for pricing and billing; allows ala carte billing of basic services and supplies for private pay residents; provides other consumer protection information to residents.

**\*16-0416-0801, Rules Governing the Department of Energy Administration Weatherization Program.** (\*PH) Chapter repeal.

**\*16-0416-0802, Weatherization Assistance Program in Idaho.** (\*PH) Chapter rewrite updates eligibility criteria and removes outdated income tables and limitations; aligns allowable expenditures; updates current standards and techniques of weatherization materials and methods; aligns service delivery rules with current practice for labor and monitoring, including the addition for energy audits, weatherization material standards, and lead safety activities for homes where needed; updates definitions and changes chapter name.

**NEGOTIATED RULEMAKING MEETINGS ARE SCHEDULED FOR THE FOLLOWING:**

**IDAPA 02 - Department of Agriculture**

**02-0613-0801**, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho.

Please refer to the Idaho Administrative Bulletin, **October 1, 2008, Volume 08-10** 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/](http://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.

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