

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative 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 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	*November 14, 2008	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
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	**August 28, 2009	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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	April 30, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

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

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

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THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-11

**ESTABLISHING A GUBERNATORIAL TASK FORCE ON MODERNIZING
TRANSPORTATION FUNDING IN IDAHO**

WHEREAS, the Idaho Transportation Department (ITD) has responsibility for approximately 12,000 lane miles of highway and over 1,760 bridges in Idaho; and

WHEREAS, a reliable, resilient and effective transportation system is essential for public safety and Idaho's long-term economic prosperity; and

WHEREAS, the current transportation revenue structure will not meet our pressing or long-term transportation funding needs; and

WHEREAS, a recent legislative audit found that current funding for transportation cannot keep pace with the growth in costs to meet Idaho's basic transportation needs of preserving and restoring Idaho's highways and bridges; and

WHEREAS, the same legislative audit determined that a significant revenue enhancement is merited; and

WHEREAS, solutions to Idaho's transportation funding challenge should be user based; and

WHEREAS, a review of such issues should be done in a comprehensive, measured and deliberative manner, providing a wide array of policy options to move transportation funding forward for Idaho; and

WHEREAS, the Idaho Legislature passed HCR 34 during the 2009 Legislative Session supporting the creation of a task force to evaluate transportation issues;

NOW, THEREFORE, I, C.L. "Butch" Otter, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order the following:

- 1. The creation of a Gubernatorial Task Force on Modernizing Transportation Funding in Idaho (Task Force);*
- 2. The Task Force shall consist of fifteen members and two non-voting, ex officio members. The membership shall include:*
 - a. The Lieutenant Governor;*
 - b. The Chair of the Senate Transportation Committee;*
 - c. The Chair of the House Transportation and Defense Committee;*
 - d. Four members of the Idaho House of Representatives, including a member from the minority party;*
 - e. Four members of the Idaho Senate, including a member from the minority party;*
 - f. Four members of the public, knowledgeable in the state's transportation system and funding mechanisms; and*
 - g. The Chair of the ITD board and another ITD board member as non-voting, ex officio members.*

3. *All appointments shall be made by the Governor. The chair and vice chair of the Task Force shall be selected by the Governor from the members of the Task Force;*
4. *The Task Force shall consider both traditional and non-traditional sources of revenue for maintenance and preservation of highways and bridges, including but not limited to possible revisions to the rates, methods and manner of calculating any and all taxes, fees and registrations relating to fuels, motor vehicles and motor carriers;*
5. *The Task Force shall provide findings and recommendations consistent with section 4 of this executive order to the Governor by December 1, 2010;*
6. *The Task Force shall draft and present legislation for consideration by the Idaho Legislature during the 2011 legislative session;*
7. *ITD shall staff the Task Force and cover all associated costs; and*
8. *The Task Force shall cease to exist on and after July 1, 2011.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 23rd day of June in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-12

**CONTINUING THE IDAHO CRIMINAL JUSTICE GRANT REVIEW BOARD FOR AWARDING
FEDERAL GRANT FUNDS - REPEALING AND REPLACING EXECUTIVE ORDER NO. 2006-03**

WHEREAS, combating and protecting citizens from crime is of vital concern to government; and

WHEREAS, it is in the best interests of the citizens of the State of Idaho that government promote efficiency and effectiveness of the criminal justice system and, where possible, create partnerships among criminal justice professionals to achieve this effectiveness and efficiency; and

WHEREAS, under the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and the Crime Control Act of 2005, each state is encouraged to develop and implement a competitive mechanism for award of certain federal grant funds.

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, do hereby establish the Idaho Criminal Justice Grant Review Board and charge this body with the responsibility to disburse such grant funding as may come within its purview with the overall mission of reducing crime in Idaho.

The Idaho Criminal Justice Grant Review Board shall consist of nineteen (19) members comprised of the following representatives (or their designees) who shall serve two-year terms at the pleasure of the Governor:

The Attorney General of the State of Idaho;

The Chief Justice of the Idaho Supreme Court;

The Director of the Idaho Department of Correction;

The Director of the Idaho State Police;

The Director of the Department of Health and Welfare;

The Director of the Office of Drug Policy;

The Director of the Idaho Department of Juvenile Corrections;

Two (2) Chiefs of Police;

Two (2) Sheriffs;

The State Appellate Public Defender;

Two (2) Prosecuting Attorneys;

One (1) representative of the Idaho Council on Domestic Violence;

One (1) representative of the private security organizations;

One (1) representative of the juvenile justice system; and

Two (2) citizens at large.

The Governor shall appoint the Chair of the Criminal Justice Grant Review Board.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 23rd day of June in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-13

**DEFERRED COMPENSATION PROGRAM FOR EMPLOYEES OF THE STATE OF IDAHO
REPEALING AND REPLACING EXECUTIVE ORDER NO. 2005-07**

WHEREAS, the Idaho Legislature, by and through the implementation of Section 59-513, Idaho Code, has provided for the establishment of a Deferred Compensation Program; and

WHEREAS, a Deferred Compensation Program has been presented to and approved by the Board of Examiners of the State of Idaho by the Deferred Compensation Committee; and

WHEREAS, administrative entities on the state level are necessary for proper implementation and maintenance of the plan;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho do hereby order the following:

1. The Deferred Compensation Committee comprised of a representative appointed by the Governor, a representative from the Office of the Attorney General, a representative from the Office of the State Controller, and a representative from the Office of the Secretary of State is hereby named as the policymaking board for a Deferred Compensation Program subject to the authority vested in the Board of Examiners of the State of Idaho by law.
2. The Deferred Compensation Committee shall make the following decisions concerning the implementation and maintenance of a Deferred Compensation Program subject to the approval of the Board of Examiners.
 - a. Selection of a third-party administrator
 - b. Selection of product companies that sell or offer securities or other assets to the State of Idaho in accordance with a Deferred Compensation Program.
 - c. Approval and monitoring of the marketing program to introduce and explain the Deferred Compensation Program to state employees.
 - d. Review all summary reports produced by the office of the State Controller and the third-party administrator to ensure proper accounting for all funds.
 - e. Review on a yearly basis the viability of all product companies associated with the Deferred Compensation Program and to determine if re-bidding is necessary.
 - f. Review all financial hardship cases and other unusual circumstances developing with employees enrolled in the Deferred Compensation Program.
 - g. Review and remove all plan documents, contracts bylaws, and rules and regulations.
 - h. Review the performance of the third-party administrator.
 - i. Review all audits of the Deferred Compensation Program.
3. The Deferred Compensation Committee through the third-party administrator shall:
 - a. Ensure that remittance to the product companies of deferred moneys are made from the periodic payroll.

- b. *Review and sign all enrollments, change and claim requests.*
- c. *Keep or arrange to keep any necessary files concerning the Deferred Compensation Program.*
- d. *Communicate with state employees concerning routine matters.*

This Executive Order shall cease to be in effect four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 23rd day of June in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, 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 August 19, 2009.

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

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

To adopt by reference the 2010 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.

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: Informal negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208)332-8692. 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 August 26, 2009.

DATED this 9th day of June, 2009.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0214-0901

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The ~~2008~~¹⁰ edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. ~~(5-8-09)~~(_____)

02. Required Reference Materials for Checking Prepackaged Commodities. The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-07a, "Standard Specification for Diesel Fuel Oils," and ASTM D6751-07a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (4-2-08)

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (5-8-09)

05. Local Availability. Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading on the internet by going to <http://nist.gov>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from ASTM. (5-8-09)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.13 - RULES GOVERNING RETAIL RAW MILK

DOCKET NO. 02-0413-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), 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 Sections 37-308, 37-314, 37-401, 37-403, 37-708, and 37-803, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held during August and September 2009. Please contact the Idaho State Department of Agriculture (ISDA) at 208-332-8550 to be included on the distribution list for the meeting announcements.

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do at least one of the following:

Attend the negotiated rulemaking meeting(s) or provide written comments via U.S. Postal Mail, email, or facsimile on or before September 30, 2009.

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

It is necessary for ISDA to update milk quality and sanitary requirements for raw milk for human consumption, to provide clarity to existing rules for raw milk produced under a "cow share" program. The proposed rule would also eliminate approximately twenty-five (25) pages of outdated rules (the rules were last amended in 1994).

The proposed rule will incorporate by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance, and will also establish sanitary criteria, milk quality, and permitting protocols for "cow share" programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the negotiated rulemaking, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

Anyone may deliver written comments regarding the negotiated rulemaking on or before by September 30, 2009.

Signed this 16th Day of July, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500 Fax: (208) 332-4062

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.31 - RULES GOVERNING AGRICULTURAL WASTE

DOCKET NO. 02-0431-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), 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 22-110(1), Idaho Code.

MEETING SCHEDULE: Public negotiated rulemaking meetings will be held during August and September 2009. Please contact the Idaho State Department of Agriculture (ISDA) at 208-332-8550 to be included on the distribution list for the meeting announcements.

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

Attend the negotiated rulemaking meeting(s) or provide written comments via U.S. Postal Mail, email, or facsimile on or before September 30, 2009.

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

ISDA has determined that it is necessary for ISDA to specifically establish the acceptable setback distance for agricultural waste storage and to develop environmental requirements to ensure the storage of agricultural waste does not significantly impact the environment. These rules are intended to apply to agricultural waste storage on property other than agricultural waste storage governed by IDAPA 02.04.14, "Rules Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the negotiated rulemaking, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

Anyone may deliver written comments regarding the negotiated rulemaking on or before September 30, 2009.

Signed this 16th Day of July, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500 Fax: (208) 332-4062

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPECIES*), IN IDAHO

DOCKET NO. 02-0606-0501

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 22-2006 and 22-2012, 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 August 19, 2009.

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

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

This rulemaking was published as a temporary rule under Docket No. 02-0606-0501 in the April 1, 2005, Idaho Administrative Bulletin, Volume No. 05-4, and has been subsequently approved and extended as a temporary rule by the 2006, 2007, 2008, and 2009 legislatures and is currently in effect. Through this rulemaking action, the Department seeks to make the changes currently in the temporary rule permanent with no additional changes being made to the proposed rule.

The following is the text of the original Proposed Administrative Rules Form (PARF) "Need for Proposed Rule Change": The industry states that there is less farm ground being irrigated under rill irrigation as more is being converted to sprinkler irrigation. The current rules for the planting of kidney and garden beans require a two-year history of rill irrigation planting in Idaho prior to a planting under sprinkler irrigation. The proposed change would be that kidney beans and garden beans could be planted under the same rules as cranberry type beans. The cranberry type bean rule allows a one-year history under rill irrigation in Idaho prior to planting under sprinkler irrigation in Idaho. The seed can then be serology tested and planted again under either sprinkler or rill irrigation in Idaho. Following a second consecutive planting under sprinkler irrigation in Idaho the seed must be serology tested prior to planting under rill irrigation. The industry states that unless the rule is changed, Idaho could begin to lose much of its bean seed business as they would be forced to move out of state due to the conversion of farm ground from gravity to sprinkler irrigation.

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(2), Idaho Code, negotiated rulemaking was not conducted because informal negotiations were held with the bean seed industry in 2005 to initiate the temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 9th day of June, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 02-0606-0501

200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.

In order to be eligible for planting bean seed in Idaho: (4-2-03)

01. Idaho Grown Seed. Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

02. Malheur County, Oregon Grown Seed. Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. (4-2-03)

03. Imported Seed Grown West of the Continental Divide in the Contiguous United States. Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

a. Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow inspected; (4-2-03)

b. Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

c. Must bear a Department approved tag (yellow); (4-2-03)

d. Shall not be planted under sprinkler irrigation; and (4-2-03)

e. Each field planted in Idaho must be submitted for field and windrow inspections. (4-2-03)

04. Imported Seed Grown East of the Continental Divide in the Contiguous United States or of Foreign Origin. Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)

05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a Foreign Country and Returned. Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but upon return shall be planted on an approved trial ground as outlined in Section 250. (4-2-03)

06. Contaminated Seeds. The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, shall not be planted in Idaho. (4-2-03)

07. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)

08. Tags. Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)

a. Department in-state planting tag (green tag); (4-2-03)

b. Department approved tag (yellow tag); (4-2-03)

- c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)
- d. Oregon Department of Agriculture inspection tag. (4-2-03)
- 09. Irrigation.** (4-2-03)
- beans:
- a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima (4-2-03)
- i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
- ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)
- iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- b. ~~Cranberry types, Taylor Horticultural types, and Borlotto types~~ All other beans: (4-2-03)(____)
- i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
- ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
- iii. ~~To be eligible for a second consecutive planting of seed under sprinkler~~ Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)(____)
- iv. Following ~~the~~ a second consecutive planting of ~~the~~ seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)(____)
- v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- ~~e. All other beans:~~ (4-2-03)
- ~~i. First two (2) generations of seed grown in Idaho must be grown and inspected under rill irrigation.~~ (4-2-03)
- ~~ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation.~~ (4-2-03)
- ~~iii. Following any generation of seed grown under sprinkler irrigation in Idaho, the seed must be grown and inspected for two (2) consecutive generations in Idaho under rill irrigation.~~ (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPECIES*) IN IDAHO

DOCKET NO. 02-0606-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 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 22-2006 and 22-2013, 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 August 19, 2009.

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

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

This is a technical correction to the rule to allow for the acceptance of bean seed crops grown in Malheur Co., Oregon and inspected by the Idaho Crop Improvement Association (ICIA) for planting in Idaho. The current rule allows for bean seed inspected by ICIA to be accepted in Idaho for Idaho grown crops. A few years ago, ICIA, under an agreement with Oregon State University, began inspecting bean seed crops in Malheur Co., Oregon and that change had not been reflected in the current Idaho rules. Oregon enforces a bean disease rule for Malheur Co. that is similar to that of Idaho.

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:

To confer a benefit. The bean seed industry has asked for this change to be in place for the 2009 growing season because ICIA inspected seed from Oregon has already been planted.

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(2), Idaho Code, negotiated rulemaking was not conducted. However, a meeting with the bean seed industry was held on November 12, 2008 at Seminis Vegetable Seed Research Center, 21120 Highway 30, Filer, Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 9th day of June, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 02-0606-0901

200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.

In order to be eligible for planting bean seed in Idaho: (4-2-03)

01. Idaho Grown Seed. Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

02. Malheur County, Oregon Grown Seed. Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. The ICIA may inspect and issue tags for bean seed grown in Malheur County, Oregon provided that each field is inspected according to these rules and the Malheur County Bean Disease Control Area order. (~~4-2-03~~)(5-1-09)T

03. Imported Seed Grown West of the Continental Divide in the Contiguous United States. Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

a. Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow inspected; (4-2-03)

b. Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

c. Must bear a Department approved tag (yellow); (4-2-03)

d. Shall not be planted under sprinkler irrigation; and (4-2-03)

e. Each field planted in Idaho must be submitted for field and windrow inspections. (4-2-03)

04. Imported Seed Grown East of the Continental Divide in the Contiguous United States or of Foreign Origin. Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)

05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a Foreign Country and Returned. Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but upon return shall be planted on an approved trial ground as outlined in Section 250. (4-2-03)

06. Contaminated Seeds. The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, shall not be planted in Idaho. (4-2-03)

07. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)

08. Tags. Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)

a. Department in-state planting tag (green tag); (4-2-03)

b. Department approved tag (yellow tag); (4-2-03)

- c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)
- d. Oregon Department of Agriculture inspection tag. (4-2-03)
- 09. Irrigation.** (4-2-03)
- a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima beans: (4-2-03)
 - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
 - ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)
 - iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- b. All other beans: (4-1-05)T
 - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
 - ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
 - iii. Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T
 - iv. Following a second consecutive planting of the seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T
 - v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.17 - RULES GOVERNING THE DISPOSAL OF CULL ONIONS AND POTATOES

DOCKET NO. 02-0617-0901

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 22-2006 and 22-2013, 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 August 19, 2009.

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

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

The current rule requires that the enforcement of the cull onion disposal begin March 15th of each year, but the rule never set an ending date. The Department had enforced the rule through the onion harvest of each year. Malheur County, Oregon has cull onion disposal rules similar to that of Idaho and has recently made a rule change setting a March 15th through July 1st enforcement period. Idaho onion growers have requested that the Department make the same change in the Idaho rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because an informal meeting was held with the Idaho Onion Growers' Association on March 20, 2009, who requested the rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper at (208) 332-8620. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 17th day of June, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 02-0617-0901

070. DISPOSITION OF CULL ONIONS.

All cull onions existing in the control area shall be disposed of by a method approved of in Section 071 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The Department shall only enforce the cull onion disposal portions of this rule from March 15th through July 1st of each year. (4-11-06)(_____)

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0904

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 33-1254 and 33-1258, 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, August 19, 2009.

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:

Past trends indicate, and current forecasts project, continued growth in online virtual schools and programs aimed at K-12 learners (Hassel & Terrell, 2004; Long, 2004; O’Gorman, 2005; Southern Regional Education Board [SREB], 2007). Forty-four states currently offer either state supplemental programs, full-time online programs or both. Increases in enrollments of 50% from fall 2007 to fall 2008 have been reported by one-third of supplemental programs (Watson, Gemin & Ryan, 2008). Idaho K-12 student enrollments in distance learning courses and programs continue to increase exponentially. In Fall 2008 over 10,000 Idaho kids were enrolled in online learning courses for either a portion or all of their school day. This spring that number rose to 15,000 students. Forces fueling the growing enrollments include funding shortages, outdated facilities (Clark, 2001; Fulton, 2002), and policy initiatives supportive of expanded opportunities for alternative routes to education (Hassell & Terrell, 2004; U. S. Department of Education, 2004; Web-Based Education Commission, 2000).

Many virtual schools have responded to this emerging need by training their own teachers. While this model can be useful for contextualized training to a specific environment, it also poses a resource burden on schools not prepared to train both teachers and children. It also creates issues with accountability and consistency in training. Historically, initial teacher training has been the realm of higher education. However, without standards for online teachers, teacher education programs are left having to develop their own guidelines and competencies to map to their coursework, resulting in inconsistencies in the quality of training provided to teachers.

With the exponential growth of online course offerings throughout the state, a need to create a set of standards for those teaching in an online environment was identified. These standards will be the framework for creating a new endorsement to be added to teaching certificates. The endorsement will not be mandated immediately by the state in order to teach online, but many of our virtual schools are interested in making it a requirement for all of their teachers. The amended version of these standards is herein incorporated by reference into these rules.

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

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

NEGOTIATED RULEMAKING: 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 Christina Linder at (208) 332-6886 or Katie Rhodenbaugh (208) 332-6885.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to

the undersigned and delivered on or before Wednesday, August 26, 2009.

DATED this 1st Day of July, 2009.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0202-0904

004. INCORPORATION BY REFERENCE.

The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

01. Incorporated Document. The Idaho Standards for the Initial Certification of Professional School Personnel as approved ~~in August~~ on June 18, 2008. (5-8-09)()

02. Document Availability. ~~The Standards are available at the~~ Copies of this document can be found on 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 website at <http://www.idahoboardofed.org> <http://www.boardofed.idaho.gov>. (3-16-04)()

03. Incorporated Document. The Standards for Idaho School Buses and Operations as approved on November 7, 2008. (5-8-09)

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>. (5-8-09)

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)

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0905

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 18, 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 33-0105 and 33-107, 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 August 19, 2009.

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 revised Driver Education Operating Procedures will bring Idaho into better alignment with national standards for Driver Education and Training programs and will specify rules that have been unclear in the past. The revisions also include additions of new rules that will improve the service driver training programs offer to Idaho teens. Examples of improvements include clarifying reasons students may be dropped from a course, the duration of a course, hours per day students may be in class and in a car, requiring parent-teacher contact, reducing paperwork for teachers, and disallowing multiple D.U.I. offenders and felony offenders against children from becoming Driver Education and Training instructors.

The change in IDAPA 08.02.02.230 corrects the name of the Idaho Operating Procedures for Public Driver Education Programs from the previously named Idaho Standards for the Initial Certification of Professional School Personnel. The name change is a result of confusion between the operating procedures and the driver education standards- two separate documents.

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:

This rule is being presented for approval as a temporary and proposed rule due to the passage of S1133 Driving Businesses Licensure Board, which becomes effective July 1, 2009. This bill separates private driver education from public driver education and moves private instructors and schools to the Department of Occupational Licensing. IDAPA 08.02.02.004 and 08.02.02.230 are incompatible with this change; therefore, the Idaho Operating Procedures for Public Driver Education Programs must be updated before July 1, 2009.

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(2), Idaho Code, negotiated rulemaking was not conducted because eight state workshops were conducted, allowing more than 250 instructors and private school owners the opportunity to comment and participate in the creation of the operating procedures.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Johns at (208) 332-6984. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st Day of July, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 08-0202-0905

004. INCORPORATION BY REFERENCE.

The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

01. Incorporated Document. The Idaho Standards for the Initial Certification of Professional School Personnel as approved in August 2008. (5-8-09)

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 7, 2008. (5-8-09)

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>. (5-8-09)

05. Incorporated Document. The Idaho Standards Operating Procedures for Public School Driver Education and Training Programs as approved on ~~August 13~~ June 18, 2004~~9~~. (~~4-6-05~~)(6-18-09)T

06. Document Availability. The Idaho Standards Operating Procedures for Public School Driver Education and Training Programs 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>. (~~5-3-03~~)(6-18-09)T

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)

230. DRIVER EDUCATION.

01. Commercial Schools. Pursuant to Section 004 of these rules, all driver education courses offered in Idaho commercial schools must be conducted in compliance with all the requirements in the Idaho Standards for Commercial Driving Schools, as incorporated. (4-11-06)

02. Public Schools. Pursuant to Section 004 of these rules, all driver education courses offered in Idaho public schools must be conducted in compliance with all the requirements in the Idaho ~~Standards~~ Operating Procedures for Public ~~School~~ Driver Education ~~and Training Programs~~, as incorporated. (~~4-6-05~~)(6-18-09)T

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0903

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-107, and 33-1612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled during the last two weeks of August and first two weeks of September. Hearings will take place throughout the state. For information, times, and locations about the public hearings please visit www.sde.idaho.gov and click on "Public Comments."

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 Middle Level Task Force was created in May 2007 to examine middle school issues as recommended by the High School Redesign efforts. Two goals of the task force were to ensure all students are prepared to be successful in high school and to increase academic engagement and student accountability for middle school students through a relevant and rigorous curriculum. Desired outcomes included ensuring all students are prepared to be successful in high school and beyond and to improve student preparation for high school and post-secondary education. To achieve these goals and work toward the desired outcomes, the Middle Level Task Force determined that students need to be introduced to the language and concept of a credit system before entering high school. The task force recognizes the need for flexibility for individual districts and schools to have credit requirements that can be fitted to their unique needs and structures and has kept this need at the forefront of their considerations.

This rule change would require each LEA (local education agency) or district to design and implement a credit system starting no later than the seventh grade. The effective date is July 1, 2010 (for the 2010-2011 school year). Students entering the 7th grade at the beginning of the 2010-2011 school year would have to meet credit requirements or complete an alternate mechanism to be promoted to the 8th grade.

Each LEA's middle level credit system must include the following minimum requirements:

1. Students shall be required to attain a minimum of 80% of their credits in order to be promoted to the next grade level.
2. Students will not be allowed to lose a full year of credit in one area (i.e. a student would not be able to fail a full year of math).
3. Students not meeting (or in jeopardy of not meeting) credit requirements will be given an opportunity to recover credits or complete an alternate mechanism in order to be eligible for promotion to the next grade level.
4. Attendance is a factor either in the credit system or the alternate mechanism or both.

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(2), Idaho Code, negotiated rulemaking was not conducted because the recommendations for change were proposed by the Middle Level Task Force which was comprised of a variety of stakeholders. Stakeholder organizations that were also consulted include the Idaho Middle Level Association, Idaho Council on Developmental Disabilities, Idaho Parent-Teacher Association and the Idaho Education Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rob Sauer at (208) 332-6934.

The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Friday, September 11, 2009.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 1st Day of July, 2009.

Tom Luna
Superintendent of Public Instruction
State Department of Education
650 West State St., 2nd Floor

PO Box 83720
Boise, ID 83720-0027
phone: (208) 332-6812
fax: (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0203-0903

107. ~~(RESERVED)~~ MIDDLE LEVEL CREDIT REQUIREMENTS.

A school district or LEA must implement a credit system no later than grade seven (7). The local school district or LEA may establish credit requirements beyond the state minimum. ()

01. Credit Requirements. The credit system shall require students to attain a minimum of eighty percent (80%) of the total credits attempted before the student will be eligible for promotion to the next grade level. A student must attain, at a minimum, a portion of the total credits attempted in each area in which credits are attempted except for areas in which instruction is less than a school year. ()

02. Credit Recovery. A student who does not meet the minimum requirements of the credit system shall be given an opportunity to recover credits or complete an alternate mechanism in order to become eligible for promotion to next grade level. ()

03. Attendance. Attendance shall be an element included in the credit system, alternate mechanism, or both. ()

04. Alternate Mechanism. A school district or LEA may establish an alternate mechanism to determine eligibility for grade level promotion. The alternate mechanism shall require a student to demonstrate proficiency of the appropriate content standards. ()

05. Special Education Students. A student who is eligible for special education services under the Individuals with Disabilities Education Improvement Act may, with the assistance of the student's Individualized Education Program (IEP) team, outline alternate requirements or accommodations to credit requirements as determined by the IEP team and are deemed necessary for the student to complete credit requirements for promotion to the next grade level. ()

06. Limited English Proficient (LEP) students. Limited English Proficient (LEP) students, as defined in Subsection 112.04.d.iv. may, with the assistance of the student's Educational Learning Plan (ELP) team, outline alternate requirements or accommodations to credit requirements as determined by the ELP team and are deemed necessary for the student to complete credit requirements for promotion to the next grade level. ()

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0904

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 18, 2009.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 33-105, Idaho Code; Section 33-107, Idaho Code; Section 33-1612, Idaho Code; Section 33-2002, Idaho Code; and 34 CFR Part 200 Elementary and Secondary Education Act.

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

The Individuals with Disabilities Act (IDEA 2004) and the Elementary and Secondary Education Act as reauthorized (ESEA 2001) require all students, including students with significant cognitive disabilities, to be able to access the general education curriculum and participate in the state accountability system. In 2003, NCLB further defined how students with significant cognitive disabilities could be included in the state accountability system by including the option for states to develop alternate assessments based on extended grade level content standards (Idaho Extended Content Standards) as well as alternate achievement, or performance standards. The Idaho Alternate Assessment - Science (IAA-Science) has been developed for use as an alternate to the ISAT-Science for students with significant cognitive disabilities who, due to the nature of their disability, cannot participate in the regular assessment, even with appropriate accommodations. The IAA-Science is given in grades 5, 7 and 10. In 2007, the US Department of Education issued new regulatory guidance that impacted the design process for alternate assessments. In the 2008-2009 school year, the Idaho Alternate Assessment-Science (IAA-Science) underwent significant changes in response to the findings in the 2007 federal peer review process.

Because of the significant changes to the IAA-Science this year, the alternate academic achievement standards for Science had to be revised. The academic achievement standards include the proficiency level descriptors and the cut score ranges that define the IAA-Science proficiency levels which are required by federal law (i.e., Advanced, Proficient, Basic and Below Basic).

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:

If the achievement standards are not approved and consequently the IAA-Science scoring cannot be completed, Idaho stands to lose 25%, or \$113,944, of its administrative Title I funding in the form of a compliance fine from the US Department of Education.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Marybeth Flachbart at (208) 332-6954.

DATED this 1st Day of July, 2009.

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

THE FOLLOWING IS THE TEMPORARY TEXT FOR DOCKET NO. 08-0203-0904

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education on August 21, 2008. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (11-3-08)T

02. The Idaho English Language Development Standards. The Idaho English Language Development Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards. Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

06. The Idaho Extended Content Standards. The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov>. (5-8-09)

07. The Idaho Alternative Assessment ~~Extended~~ Achievement Standards. Alternative Assessment ~~Extended~~ Achievement Standards as adopted by the State Board of Education on ~~February 28~~ June 18, 2008. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (~~5-8-09~~)(6-18-09)T

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-0901

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 72-1333, 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 August 19, 2009.

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:

IDAPA 09.01.30.225 is being changed to provide that benefits are the property of the claimant's estate rather than stating that benefits are payable to the administrator, who may include heirs other than a surviving spouse or dependent children.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Roger Holmes, Unemployment Insurance Benefits Bureau Chief, (208) 332-3570 ext. 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 August 26, 2009.

DATED this 2nd of July, 2009.

Roger Holmes
Unemployment Insurance Benefits Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
(208) 332-3570 ext. 3233
Fax: (208) 334-6125

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0130-0901

004. INCORPORATED BY REFERENCE.

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

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

The principle place of business of the Department of Labor is in Boise, Idaho. ()

01. Street Address and Hours. The office is located at, 317 W. Main St., Boise, Idaho 83735, and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho, 83735. ()

03. Telephone. The telephone of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ()

0047. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

225. DECEASED CLAIMANTS.

Upon the death of a benefit claimant who has completed a compensable period prior to his death, distribution of benefits due him shall be made to the surviving spouse or, if none, to the dependent child or children. If there is no surviving spouse nor dependent child or children, the benefits shall become *payable to the administrator of the property of the claimant's estate. An administrator of the estate may include children other than dependent children, surviving parents, the personal representative named in a will, or the personal representative appointed by a court.* *Ref. Sec. 72-1370, Idaho Code.* (3-19-99)()

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0901

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 72-1333, 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 August 19, 2009.

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:

IDAPA 09.01.35.241 is being changed to delete from subsection (c) and move to a new subsection (d), with minor changes, the following: "In order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages."

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, (208) 332-3570 ext. 3258.

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 August 26, 2009.

DATED this 2nd of July, 2009.

Don Arnold
Unemployment Insurance Compliance Bureau Chief
Department of Labor
317 W. Main St., Boise, ID 83735
(208) 332-3570 ext. 3258
Fax: (208) 334-6301

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0135-0901

241. BOARD, LODGING, MEALS.

When board, lodging, meals, or any other payment in kind considered as payment for services performed by an employee constitute a part of wages or wholly comprise an employee's wages, the value of such board, lodging, or other payment shall be determined as follows: (3-19-99)

01. Cash Value. If a cash value for such board, lodging, or other payment is agreed upon in any contract of hire, the amount so agreed upon shall be used provided it is a reasonable, fair market value. If there is no agreement, or if the contract of hire states an amount less than a reasonable, fair market value, the Department of Labor shall determine the reasonable or fair market value to be used. Ref. Sec. 72-1328, Idaho Code. (3-30-01)

02. Meals and Lodging Not Included in Gross Wages. The value of meals and lodging furnished by an employer to the employee will not be included in the employee's gross income if it meets the following tests: (4-11-06)

- a. The meals or lodging are furnished on the employer's business premises; (3-19-99)
- b. The meals or lodging are furnished for the employer's convenience; and (3-19-99)
- c. In the case of lodging (but not meals), the employees must be required to accept the lodging as a condition of their employment. This means that they must accept the lodging to allow them to properly perform their duties. ()

d. In ~~addition, in~~ order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages. Ref. Sec. 72-1328, Idaho Code. (~~3-19-99~~)()

03. Meals or Lodging for Employer Convenience. Meals or lodging furnished will be considered for the employer's convenience if the employer has a substantial business reason other than providing additional pay to the worker. A statement that the meals or lodging are not intended as pay is not enough to prove that either meals or lodging are furnished for the employer's convenience. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

04. Subsistence Remuneration. In the case of employees who receive remuneration in the form of subsistence, such as groceries, staples, and fundamental shelter, the fair value of such subsistence will be determined by the Director. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0902

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 72-1333, 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 August 19, 2009.

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:

IDAPA 09.01.35.262.01 is being changed to insert "paid" to accurately reflect that wages must be paid for this rule to apply.

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

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

There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, (208) 332-3570 ext. 3258.

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 August 26, 2009.

DATED this 2nd of July, 2009.

Don Arnold
Unemployment Insurance Compliance Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
(208) 332-3570 ext. 3258
Fax: (208) 334-6301

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0135-0902

262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.

01. Wage Assignment to Proper Calendar Quarter. Wages paid shall be assigned to the calendar quarter in which the wages were: ~~(3-19-99)~~(____)

a. Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or (3-30-01)

b. Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or (3-30-01)

c. Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Sec. 72-1367, Idaho Code. (3-19-99)

02. Draws and Advances on Wages. Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. (3-19-99)

03. Judgments of Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

04. Awarded Damages Against Employers. Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

**IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-0901

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

TUESDAY - AUGUST 18, 2009 - 9:00 a.m.

**J.R. WILLIAMS EAST CONFERENCE ROOM
700 W. State St., Boise, ID 83702**

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 anticipation of the likelihood of the conversion of the licensing and certification examinations to a computer-based format rather than the current paper-and-pencil format, the proposed changes provide the Board flexibility in accepting examinations offered at different frequencies, of different duration, and different organization than the current examinations. The proposed changes make technical corrections and remove some obsolete language; clarify that an individual must first be licensed as a professional engineer in Idaho especially qualified in a "base" discipline before taking the exam in structural engineering; reflect the fact that the examinations are no longer administered directly by the Board; and clarify the Board's right to publish disciplinary actions.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, page 45.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or 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 August 26, 2009.

DATED this 19th day of June, 2009.

David L. Curtis, P.E.
Executive Director
Board of Professional Engineers and Professional Land Surveyors
5535 W. Overland Road
Boise, Idaho 83705

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 10-0101-0901

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 licensure or certification for essential data prior to consideration thereof by the Board; (5-8-09)

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 licensure and the roster of licensees and certificate holders; (5-8-09)

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: (5-8-09)

a. Not be a member of the Board. (7-1-93)

b. Be a licensed professional engineer or professional land surveyor in the state of Idaho and possess other qualifications required for members of the Board. (5-8-09)

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. (5-8-09)

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. Licensure as a professional engineer or professional land surveyor by examination. (5-8-09)
- b. Certification as an engineer intern or land surveyor intern by examination. (5-8-09)
- 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 intern or land surveyor intern. (5-8-09)
- e. Renewals for professional engineers, professional land surveyors, engineer interns, land surveyor interns and business entities. (5-8-09)
- f. Licensure for professional engineers or professional land surveyors by comity. (5-8-09)

02. Late or Denied Renewals. Failure on the part of any licensee or business entity to renew their ~~fees~~ license or certificate of authorization 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. (~~5-8-09~~)(____)

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, engineer interns, and land surveyor interns. (5-8-09)

04. Schedule of Fees. The schedule of fees as determined by the Board shall be furnished to applicants with application forms. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

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 intern or land surveyor intern will be held ~~annually or semi-annually, the exact time and place~~ on dates and at times and places to be determined by the

Board. Special oral or written examinations ~~during the year~~ may be given by the Board as necessary. ~~(5-8-09)~~(____)

02. Eligibility for Examinations, Educational Requirements. The application for licensure as a professional engineer, professional land surveyor or certification as an engineer intern or land surveyor 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 being assigned~~ to any examination. ~~(5-8-09)~~(____)

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), Inc.~~ Non-EAC/ABET accredited engineering programs, related science 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 Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (5-8-09)

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 Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: (5-8-09)

- 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 ~~not~~ licensed as a professional engineer in Idaho especially qualified in a discipline other than structural engineering. (~~5-8-09~~)()

ii. Have two (2) years of work experience in the field of structural engineering after being 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 duration of the examination shall be sixteen (16) hours as determined by the Board. (~~5-8-09~~)()

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~~ ABET, Inc. 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. (~~5-8-09~~)()

~~**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)~~

053. **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)

064. **Two Examinations for Engineering Licensure.** The complete examining procedure for licensure as a professional engineer normally consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer intern certification, and the second is the Principles and Practice of Engineering for professional engineer licensure. ~~Each~~ The examination shall be ~~eight (8) hours in length a duration as determined by the Board.~~ 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 program. A certificate as an Engineer 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. (~~5-8-09~~)()

075. **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. (5-8-09)

086. 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)

097. Two Examinations for Land Surveying Licensure. The complete examining procedure for licensure as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Surveying examination for land surveyor intern certification, and the second is the Principles and Practice of Surveying for professional land surveyor licensure. ~~Each~~ The examination will shall be a ~~total of eight (8) hours in length~~ duration as determined by the Board. Having passed the Fundamentals of Surveying examination, applicants will be required to take the Principles and Practice of 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 Surveying examination may consist of separate modules, each of which must be passed. (5-8-09)()

408. 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)

~~409.~~ **Special Examinations.** A special examination, written or oral or both, may be required in certain instances where the applicant is seeking 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 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. (5-8-09)

120. Grading. Each land surveyor intern, engineer intern and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire ~~eight (8) hour~~ examination or modules as determined by the Board, before being awarded certification or 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~~ module of the examination. (5-8-09)()

131. Use of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineer intern, professional land surveyors, and land surveyor 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. (5-8-09)()

142. 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)~~

163. 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. (5-8-09)

018. REEXAMINATIONS.

01. Allowing Reexamination upon Failure. An applicant failing any portion of ~~the Principles and Practice of Surveying~~ an 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. (5-8-09)(____)

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 present evidence of having met the requirements set forth in Section 54-1214, Idaho Code in order to be reassigned to an examination. (5-8-09)

019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.

01. Interstate 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. (5-8-09)

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 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. (5-8-09)

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 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.~~ (5-8-09)(____)

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 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. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

021. RIGHT TO PUBLISH DISCIPLINARY ACTIONS.

The Board office may disclose the filing and the nature of a complaint, but may not disclose the details of an investigation. Final, formal enforcement, ~~including, but not limited to actions such as fines, assessment of expenses, revocations or suspensions~~ shall be public information. ~~Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest.~~ Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspaper of general circulation or, for a period of up to ten (10) years, may post it on the Internet. ~~The Board may also advise anyone requesting such information of the contents of any order issued by it.~~ (5-3-03)(____)

**IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-0901

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

TUESDAY - AUGUST 18, 2009 - 9:00 a.m.

**J.R. WILLIAMS EAST CONFERENCE ROOM
700 W. State St., Boise, ID 83702**

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:

The proposed rules amendments define “deceit” and “incompetence” and clarify the definition of “misconduct.” They clarify the standard of care and the obligations of engineers and land surveyors in reports, statements or testimony and communication with clients. They make technical corrections in spelling and grammar.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, page 46.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or 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 August 26, 2009.

DATED this 19th day of June, 2009.

David L. Curtis, P.E.
Executive Director
Board of Professional Engineers and Professional Land Surveyors
5535 W. Overland Road
Boise, Idaho 83705

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 10-0102-0901

004. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (7-1-93)

01. Board. The Board of Licensure of Professional Engineers and Professional Land Surveyors. (5-8-09)

02. Certificate Holder. Any person holding a current certificate as an Engineer Intern or a Land Surveyor 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. (5-8-09)

03. Deceit. To intentionally misrepresent a material matter, or intentionally omit to disclose a known material matter. ()

04. Incompetence. Failure to meet the standard of care. ()

035. Licensee. Any person holding a current license as a Professional Engineer, a Professional Land Surveyor, or a combination thereof, which has been duly issued by the Board. (5-8-09)

046. 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 licensee's or certificate holder's honesty, trustworthiness or fitness as a licensee or certificate holder in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation a finding of guilt of commitment of a felony or a plea of guilty to a felony; commit fraud or deceit;~~ state or imply an ability to influence improperly a government agency or official. (5-8-09)()

005. RESPONSIBILITY TO THE PUBLIC.

01. Primary Obligation. All 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. (5-8-09)

02. Standard of Care. Each 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. (5-8-09)()

03. Professional Judgment. If any Licensee's or Certificate Holder's professional judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the 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. (5-8-09)

04. Obligation to Communicate Discovery of Discrepancy. If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another 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 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 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 Licensee or Certificate Holder. Failure to respond on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the 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. (5-8-09)

05. Obligation to Comply with Rules of Continuing Professional Development. All Licensees shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development."
(5-8-09)

~~**06. Obligation to Communicate with Clients.** A Licensee shall be complete, objective and truthful in all communications with clients.~~
(5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

007. PUBLIC STATEMENTS.

01. ~~Complete, Objective and Truthful~~ Reports, Statements or Testimony. A Licensee shall ~~be complete, objective and truthful~~ not commit fraud, violate the standard of care, or engage in deceit or misconduct 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.
(5-8-09)(_____)

02. Opinions Based on Adequate Knowledge. A 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.
(5-8-09)

03. Statements Regarding Public Policy. On matters connected with establishing public policy a 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.
(5-8-09)

04. Actions in Regard to Other Registrants or Certificate Holders. A Licensee or Certificate Holder shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another Licensee or Certificate Holder, nor shall he indiscriminately criticize another Licensee's or Certificate Holder's work in public. If he believes that another 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.
(5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

011. RULE AND STATUTE VIOLATIONS.

01. Affidavits for Rule and Statute Violations. Any person who believes that a Licensee or Certificate Holder by his actions, or failure to properly act, is guilty of fraud, deceit, negligence, incompetence, 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 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 may investigate, hold hearings and adjudicate the charges. Proceedings shall be exempt from all statutes of limitations.
(5-8-09)(_____)

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 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.25 - RULES GOVERNING FEES CHARGED BY THE STATE LABORATORY

DOCKET NO. 16-0225-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1003, 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, August 19, 2009.

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:

An internal Department audit of the Bureau of Laboratories conducted in the Spring of 2008 found that definitions, tests, and fees in the lab fees rule chapter are outdated and need to be updated to reflect current practice and more fully cover the actual cost of laboratory tests.

In response to the audit, the current chapter is being repealed under this docket and rewritten under companion Docket No. 16-0225-0902.

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, negotiated rulemaking was not conducted because the chapter is being repealed (and rewritten) in response to the findings of an internal audit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tamara Hogg at (208) 334-2235 x262.

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, August 26, 2009.

DATED this 6th day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16.02.25 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.25 - FEES CHARGED BY THE STATE LABORATORY

DOCKET NO. 16-0225-0902 (CHAPTER REWRITE - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1003, 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, August 19, 2009.

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:

An internal Department audit of the Bureau of Laboratories in the Spring of 2008 found that definitions, tests, and fees in the lab fees rule chapter are outdated and need to be updated to reflect current practice.

In response to the audit, the current chapter of rules is being completely rewritten. The current chapter is being repealed in this Bulletin under Docket No. 16-0225-0901.

The rewrite of the rules adds the standard sections required by the Office of Administrative Rules (OAR), updates chapter definitions, updates the list of laboratory tests offered by the Bureau of Laboratories and their respective fees, as well as reorganizes the chapter and revises the language to reflect the Department's plain language standards.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fees for the laboratory tests performed by the Bureau of Laboratories are being increased. There are over 200 different tests whose fees range from \$6 to \$373. See below for fiscal impact.

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 Bureau's calculations based on State Fiscal Year 2008 testing levels indicate the change in fees will result in an increase of receipts estimated at \$130,000:

1. \$77,000 in Environmental - fees mainly billed to private individuals, public water systems, the Department of Environment Quality (DEQ), and the district health departments.
2. \$43,000 in Microbiology - fees mainly billed to private doctors, hospitals, county jails, and juvenile detention centers. \$5,900 is estimated to come from Medicaid based on current reimbursement rates for new refugee parasite testing.
3. \$10,000 in Virology - fees mainly billed to private doctors, hospitals, county jails, and juvenile detention centers.

The increase in fees will not have an impact on the state general fund for the state laboratories, but should more fully cover the actual costs of the tests. Currently, the receipts appropriation for the state laboratories is sufficient to cover this increase.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the chapter is being rewritten in response to the findings of an internal audit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tamara Hogg at (208) 334-2235 x262.

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, August 26, 2009.

DATED this 6th day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0225-0902

**IDAPA 16
TITLE 02
CHAPTER 25**

16.02.25 - FEES CHARGED BY THE STATE LABORATORY

000. LEGAL AUTHORITY.

Under Section 56-1003, Idaho Code, the Department of Health and Welfare is responsible for the supervision and administration of laboratories and administration of standards of tests for environmental pollution, chemical analyses, and communicable diseases. Authority to set fees and establish charges for laboratory services is vested in the Director, under Section 56-1007, Idaho Code. ()

001. TITLE, SCOPE, AND POLICY.

01. Title. The title of these rules is IDAPA 16.02.25, "Fees Charged by the State Laboratory." ()

02. Scope. The intent of these rules is to standardize all fees levied by the Bureau of Laboratories for the services it provides. The Bureau of Laboratories is also known as the "State Laboratory." ()

03. Policy. The primary purpose of the Bureau of Laboratories of the Idaho Department of Health and Welfare is to provide laboratory services to support the various programs carried out by the Department, district health departments, and other agencies. Since it is not economically feasible for all departments of state governments to develop their own laboratories, the Department laboratories provide services, as appropriate, to other state agencies. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: ()

01. ASTM. *D3977-97 Standard Test Methods for Determining Sediment Concentration in Water Samples* (2002). American Society for Testing and Materials (ASTM) International. <http://www.astm.org/DATABASE.CART/HISTORICAL/D3977-97R02.htm>. ()

02. BAM. *Bacteriological Analytical Manual* (BAM). U.S. Department of Health and Human Services, U.S. Food and Drug Administration (FDA). <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/default.htm>. ()

03. EPA. The following are analytical test methods published by the U.S. Environmental Protection Agency (EPA). ()

a. Approved general-purpose methods. <http://www.epa.gov/waterscience/methods/method/>. ()

b. Approved industry-specific methods. <http://www.epa.gov/waterscience/methods/method/industry.html>. ()

c. Oil and Grease Measurements. <http://www.epa.gov/waterscience/methods/method/oil/>. ()

d. EPA 8000 Series Methods. http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/8_series.htm. ()

e. Reference Method for the Determination of Fine Particulate Matter as PM 2.5 in the Atmosphere. 40 CFR Part 50, Appendix L, 2006. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?=&ecfr&sid=b79c1c245012b17be65dce0e1b01e5ed&rgn=div9&view=text&node=40:2.0.1.1.1.0.1.17.12&idno=40>. ()

f. Reference Method for the Determination of Particulate Matter as PM 10 in the Atmosphere. 40 CFR Part 50, Appendix J, 1987. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?=&ecfr&sid=27abb7e56d01495e1ad71e44a9d26c96&rgn=div9&view=text&node=40:2.0.1.1.1.0.1.17.10&idno=40>. ()

04. NIOSH. *NIOSH Manual of Analytical Methods* (NMAM®), 4th edition. P.C. Schlecht and P.F. O'Connor, editors. 1994. U.S. Department of Health and Human Services. <http://www.cdc.gov/niosh/nmam/>. ()

05. SM. *Standard Methods for the Examination of Water and Wastewater*, 20th edition. Clesceri, Lenore S., Arnold E. Greenburg, and Andrew D. Eaton, Eds. 1998. American Public Health Association, American Water Works Association, and Water Environment Federation. ()

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. ()

a. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

b. The Bureau of Laboratories is located at 2220 Old Penitentiary Road, Boise, Idaho, 83712-8299. ()

04. Telephone. ()

a. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

b. The telephone number for the Bureau of Laboratories is (208) 334-2235. ()

05. Internet Website. ()

a. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

b. The internet website for the Bureau of Laboratories is found at <http://www.statelab.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: ()

01. ASTM. Refers to a standard analytical test method published by the American Society for Testing and Materials International. (See Section 004 of these rules.) ()

02. BAM. Refers to a bacteriological analytical test method published by the U.S. Food and Drug Administration. (See Section 004 of these rules.) ()

03. Clinical Laboratory Tests. Microbiological analysis for diagnosis of infectious diseases affecting human health. ()

04. Department. Idaho Department of Health and Welfare. ()

05. Director. The Director of the Idaho Department of Health and Welfare or designee. ()

06. Environmental Laboratory Tests. Analysis of various samples from air, microbiological, organic, or inorganic sources. ()

07. EPA. Refers to an analytical test method published by the U.S. Environmental Protection Agency. (See Section 004 of these rules.) ()

08. NIOSH. Refers to an analytical test method published by the National Institute for Occupational Safety and Health. (See Section 004 of these rules.) ()

09. SM. Refers to a standard method of water testing published in the *Standard Methods for the Examination of Water and Wastewater*. (See Section 004 of these rules.) ()

10. State Health Official. Administrator of the Department's Division of Public Health. ()

011. -- 099. (RESERVED).

100. FEES FOR CLINICAL LABORATORY TESTS.

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
16S rDNA Sequence Analysis	\$70.00
Antimicrobial Susceptibility	\$62.00
Biochemical Identification System	\$38.00
<i>Bordetella pertussis</i> , Culture	\$18.00
<i>Bordetella pertussis</i> , FA	\$43.00
<i>Bordetella pertussis</i> , RT-PCR	\$25.00
<i>Campylobacter</i> , Confirmation	\$23.00
<i>Campylobacter</i> , DNA Probe	\$77.00
<i>Chlamydia trachomatis</i> and <i>Neisseria gonorrhoeae</i> by Nucleic Acid Amplification	\$16.00
<i>Cryptosporidium/Giardia</i> , IFA	\$69.00
Cytomegalovirus, IGG Antibody, IFA	\$56.00
Cytomegalovirus, IGM Antibody, IFA	\$56.00
<i>Diphtheria</i> , Primary Culture	\$68.00
Disk Diffusion Test	\$8.00
<i>Escherichia coli</i> /Shiga Toxin PCR	\$98.00
<i>Escherichia coli</i> 0157 Immunocard	\$30.00
<i>Escherichia coli</i> 0157:H7, Confirmation	\$17.00
<i>Escherichia coli</i> O157:H7, Culture	\$11.00
<i>Escherichia coli</i> , Serotyping	\$75.00
Enteric Pathogens, Primary Culture (<i>Salmonella</i> , <i>Shigella</i> , <i>Campylobacter</i>)	\$24.00
Enteric Pathogens, Primary Culture (<i>Aeromonas</i> spp., <i>Plesiomonas shigelloides</i> , <i>Bacillus cereus</i> , <i>Clostridium</i> <i>perfringens</i> , <i>Staphylococcus aureus</i> , <i>Vibrio</i> spp., <i>Yersinia</i> spp., <i>Listeria monocytogenes</i>)	\$63.00
Enterovirus Isolation	\$95.00
E Test	\$28.00
Fungus, LSU rDNA Sequence Analysis	\$70.00
Hantavirus, IGG & IGM Antibody, EIA	\$306.00
Hemagglutination Inhibition	\$80.00

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Hepatitis B, Core Total Antibody, EIA	\$15.00
Hepatitis B, Surface Antibody, EIA	\$15.00
Hepatitis B, Surface Antigen Confirmation, EIA	\$127.00
Hepatitis B, Surface Antigen, EIA	\$15.00
Hepatitis C, Antibody, EIA	\$20.00
Herpes Simplex Type 1 & Type 2, IGG Antibody, EIA	\$35.00
Herpes Simplex Virus Isolation	\$53.00
HIV-1, Antibody, EIA	\$15.00
HIV-1, Western Blot	\$311.00
Influenza Virus, RT-PCR	\$69.00
<i>Legionella</i> , Culture, Clinical	\$120.00
Mumps, IGG Antibody, EIA	\$15.00
Mumps, IGM Antibody, IFA	\$56.00
Mumps, Virus Isolation	\$88.00
Mycobacteria, AFS-Fluorochrome	\$98.00
Mycobacteria, Biochemical Test	\$35.00
Mycobacteria, Drug Susceptibility	\$373.00
Mycobacteria, Primary Culture	\$15.00
Mycobacteria, Reference Culture	\$19.00
Mycobacteria, Tuberculosis Quantiferon -TB Gold In Tube	\$90.00
Mycobacteria, Zeihl-Neelsen Stain	\$15.00
<i>Neisseria gonorrhoeae</i> , DNA Probe	\$49.00
<i>Neisseria gonorrhoeae</i> , Primary Culture	\$12.00
Norovirus, RT-PCR	\$66.00
Nucleic Acid Probe	\$142.00
Parasite Exam, Blood or Tissue	\$19.00
Parasite Exam, Concentrate & Trichrome Stain	\$76.00
Parasite Exam, Gross	\$49.00
Parasite Exam, Microscopic	\$20.00
Pulsed Field Gel Electrophoresis	\$90.00
Rabies, FA	\$50.00
Reference Culture, Aerobe	\$28.00
Reference Culture, Anaerobe	\$48.00

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Reference Culture, Serotyping	\$64.00
Respiratory Virus Isolation	\$94.00
Rubella, IGG Antibody, EIA	\$15.00
Rubella, IGM Antibody, EIA	\$82.00
Rubeola (Measles), IGG Antibody, EIA	\$15.00
Rubeola (Measles), IGM Antibody, EIA	\$95.00
<i>Salmonella</i> , Serotyping	\$37.00
Shiga Toxin, Immunoassay	\$12.00
<i>Shigella</i> , Serogrouping	\$30.00
<i>Shigella flexneri</i> , Serogrouping	\$30.00
St. Louis Encephalitis, RT-PCR	\$52.00
<i>Staphylococcus aureus</i> , Methicillin Resistant (MRSA), Identification/Confirmation	\$29.00
<i>Staphylococcus aureus</i> , Methicillin Resistant (MRSA), PCR	\$152.00
Syphilis, Treponema Pallidum Passive Agglutination	\$34.00
Syphilis, Venereal Disease Research Laboratory (VDRL)	\$9.00
Syphilis, Venereal Disease Research Laboratory (VDRL), Quantitative	\$6.00
Vancomycin Resistant <i>Enterococcus</i> (VRE)	\$93.00
Vancomycin-Intermediate/Resistant <i>Staphylococcus aureus</i> (VISA)	\$93.00
Varicella Zoster, IGG Antibody, EIA	\$15.00
Varicella Zoster, IGM Antibody, IFA	\$56.00
Varicella Zoster, Virus Isolation	\$91.00
West Nile Virus/St. Louis Encephalitis Virus, CDC MAC ELISA	\$81.00
West Nile Virus/St. Louis Encephalitis Virus IGM Antibody, Microsphere Immunoassay	\$49.00
West Nile Virus/St. Louis Encephalitis Virus Plaque Reduction Neutralization Test (PRNT)	\$278.00
West Nile Virus, IGG Antibody Screen, EIA	\$73.00
West Nile Virus, IGM Antibody Screen, EIA	\$78.00
West Nile Virus, RT-PCR	\$58.00
Western Equine Encephalitis, RT-PCR	\$52.00

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101. -- 199. (RESERVED).

200. FEES FOR ENVIRONMENTAL LABORATORY TESTS.

01. Environmental Laboratory Tests, Air -- Table.

Fees for Environmental Laboratory Tests -- Air	
Air Test Name	Fee
PM10, EQPM-1102-150, Air	\$8.00
PM25, RFPS-0499-129, Air	\$20.00

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02. Environmental Laboratory Tests, Microbiology -- Table.

Fees for Environmental Laboratory Tests -- Microbiology	
Microbiology Test Name	Fee
<i>Bacillus cereus</i> , BAM14, Food or Vegetation	\$93.00
<i>Bacillus cereus</i> , Enterotoxin	\$96.00
<i>Clostridium perfringens</i> ENTER, PET-RPLA	\$95.00
<i>Campylobacter</i> , BAM7, Food or Vegetation	\$75.00
<i>Clostridium perfringens</i> , BAM16	\$22.00
Computer Augmented Identification System	\$50.00
<i>Escherichia coli</i> H7 Confirmation, Latex Agglutination	\$20.00
<i>Escherichia coli</i> O157 Confirmation, Latex Agglutination	\$20.00
<i>Escherichia coli</i> O157:H7, 9260F	\$100.00
<i>Escherichia coli</i> O157:H7, Screen, BAM4A, Food or Vegetation	\$32.00
<i>Escherichia coli</i> , SM 9221F, Soil	\$28.00
<i>Escherichia coli</i> , SM 9221F, Water	\$26.00
ECO, CLPP, Developmental, Water	\$22.00
Fecal Coliform, SM 9221E, Soil	\$25.00
Fecal Coliform, SM 9221E, Water	\$25.00
Fecal Coliform, SM 9222D, Water	\$22.00
Heterotrophic Plate Count, SM 9215B-R2A	\$25.00
Heterotrophic Plate Count, SM 9215B-SPC	\$25.00
Identification of Iron Bacteria, Water	\$33.00
Identification System, Water, Food or Vegetation	\$50.00
<i>Legionella</i> , SM 9260J, Water	\$35.00

Fees for Environmental Laboratory Tests -- Microbiology	
Microbiology Test Name	Fee
Listeria Screen, BAM10, Food or Vegetation	\$75.00
Pseudomonas aeruginosa, SM 9213F, Water	\$75.00
Quanti-Tray, SM 9223B	\$20.00
Salmonella Screen, BAM5, Food or Vegetation, Water	\$23.00
Salmonella, SM 9260B, Water	\$75.00
Staphylococcus aureus Confirmation, BAM12AUX, Food or Vegetation	\$47.00
Staphylococcus aureus Isolation, BAM12, Food or Vegetation, Water	\$15.00
Staphylococcal Enterotoxin	\$130.00
Total Coliform, SM 9221B, Water	\$29.00
Total Coliform, SM 9221BC, Drinking Water	\$16.00
Total Coliform, SM 9222B, Water	\$18.00
Total Coliform, SM 9223B-PA-CS	\$11.00
Total Coliform, SM 9223B-PA-CT	\$11.00
Total Coliform, SM 9223B-QT-CS	\$15.00
Total Coliform, SM 9223B-QT-CT	\$15.00

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03. Environmental Laboratory Tests, Inorganic -- Table.

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
Alkalinity (CaCO ₃), SM 2320B, Water	\$14.00
Arsenic Speciation	\$150.00
BOD-5, SM 5210B, Water	\$31.00
Chlorophyll A, SM 10200H, Water and Pheophytin A, SM 10200H, Water	\$100.00
Conductivity, SM 2510B, Water	\$11.00
Corrosivity, Calculation, Water	\$59.00
Cyanide, Total, SM 4500, Soil	\$33.00
Cyanide, Total, SM 4500, Water	\$33.00
Cyanide, WAD, SM 4500, Soil	\$33.00
Cyanide, WAD, SM 4500, Water	\$33.00
EPA 180.1, Turbidity, Water	13.00

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
EPA 200.2 - Metals Digestion	\$19.00
EPA 200.7, Dissolved, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)	\$13.00
EPA 200.7, Drinking Water, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)	\$13.00
EPA 200.7, Water, ICP (Metals Digestion is performed and charged for when turbidity is above 1 NTU)	\$13.00
EPA 200.8, Uranium, Water	\$44.00
EPA 200.8, Water, ICPMS - Excludes Uranium (Fee is for each individual metal tested)	\$13.00
EPA 200.9, Dissolved, AA	\$21.00
EPA 200.9, Water, AA	\$21.00
EPA 200.9, Water, GFAA	\$21.00
EPA 245.1, Mercury, Dissolved, CVAA	\$29.00
EPA 245.1, Mercury, Water, CVAA	\$29.00
EPA 245.7, Mercury, Water, CVAFS	\$34.00
EPA 300.0, Chloride, Water	\$19.00
EPA 300.0, Fluoride, Water	\$19.00
EPA 300.0, Nitrate as N, Water	\$19.00
EPA 300.0, Sulfate, Water	\$19.00
EPA 300.1, Bromate, Water	\$100.00
EPA 300.1, Bromide, Water	\$32.00
EPA 300.1, Chlorate, Water	\$100.00
EPA 300.1, Chlorite, Water	\$150.00
EPA 350.1, Ammonia as N, Water	\$18.00
EPA 351.2, Total Kjeldahl Nitrogen, Soil	\$53.00
EPA 351.2, Total Kjeldahl Nitrogen, Water	\$34.00
EPA 353.2, Nitrate as N, Water	\$19.00
EPA 353.2, Nitrate+Nitrite as N, Water	\$17.00
EPA 365.1, Total Phosphorus, Lach, Water	\$24.00
EPA 376.2, Sulfide as H ₂ S, Water	\$19.00
EPA 410.2, COD, Water	\$29.00
EPA 1311, TCLP Extraction	\$165.00
EPA 3005A, Metals Digestion	\$19.00

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
EPA 3050B, Metals Digestion	\$19.00
EPA 7473, Mercury	\$44.00
EPA 8231, Hach, COD, Water	\$29.00
Hardness, SM 2340C, Water	\$22.00
Nitrite as N, SM 4500, Water	\$16.00
Orthophosphate as P, SM 4500, Dissolved	\$17.00
Orthophosphate as P, SM 4500, Water	\$17.00
PH, SM 4500H, Water,	\$10.00
Pheophytin A, SM 10200H, Water (See Chlorophyll A, SM 10200H, Water and Pheophytin A, SM 10200H, Water)	
Settleable Solids, SM 2540F, Water	\$16.00
SM 3111 (Pb, Co-TCLP, Cu-TCLP)	\$14.00
SM 6010B, Soil, ICP	\$11.00
Total Dissolved Solids, SM 2540C, Water	\$15.00
Total Solids, SM 2540B, Water	\$13.00
Total Suspended Sediment, ASTM 3977, Water	\$14.00
Total Suspended Solids, SM 2540D, Water	\$14.00
Volatile Solids, SM 2540G, Water	\$24.00

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04. Environmental Laboratory Tests, Organic -- Table.

Fees for Environmental Laboratory Tests -- Organic	
Organic Test Name	Fee
ELISA, Water (Submitter provides test kit; cost is for the analysis of each test kit)	\$10.00
EPA 504.1, Water, GC-ECD	\$100.00
EPA 508, Water, GC-ECD	\$135.00
EPA 515.4, Water, GC-ECD	\$162.00
EPA 524.2(4), Water, GCMS, P&T	\$187.00
EPA 525.2, Water, GCMS	\$182.00
EPA 531.2, Water, HPLC	\$169.00
EPA 547, Water, HPLC	\$142.00
EPA 548.1, Water, GCMS	\$144.00

Fees for Environmental Laboratory Tests -- Organic	
Organic Test Name	Fee
EPA 549.2, Water, HPLC	\$117.00
EPA 552.2, HAAs, GC-ECD, Water	\$150.00
EPA 1664, Oil and Grease, Water	\$44.00
EPA 5035/8260, BTEX	\$97.00
EPA 8081 PCBs	\$117.00
EPA 8260, BTEX	\$97.00
EPA 8260B, Soil, GCMS, P&T	\$187.00
EPA 8260B, Water, GCMS, P&T	\$187.00
EPA 8270, Soil, PAH	\$349.00
Hazardous Waste Analysis	\$50.00
TCE, PCE, NIOSH 1003, Air, FID	\$50.00

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201. -- 899. (RESERVED).

900. WAIVER OF FEES.

Upon demonstration of good cause, any fee levied under this chapter may be suspended or waived, in full or in part, by the State Health Official.

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901. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0901

NOTICE OF RESCISSION OF TEMPORARY RULE

EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE: The effective date of the rescission of these temporary rules is July 1, 2009.

AUTHORITY: In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rules previously adopted under this docket. The action is authorized pursuant to Sections 56-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for rescinding the temporary rule:

These temporary rules are being rescinded under this docket in order to add additional requirements into sections contained in this rule change. The Department determined it would be less confusing and easier to read for the temporary rule to be rescinded and republish all changes needed in these sections. The original temporary rule Docket 16-0305-0901 published in the February 4, 2009, Idaho Administrative Bulletin, Vol. 09-2, pages 12 through 19.

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 due to the rescission of the temporary rule for this rulemaking docket.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission of this temporary rule, contact Peggy Cook at (208) 334-5969.

DATED this 2nd day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE
AGED, BLIND, AND DISABLED (AABD)**

DOCKET NO. 16-0305-0902 (FEE RULE)

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 56-202, 56-239, and 56-240, Idaho Code, and Title XXI of the Social Security Act

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

MONDAY - AUGUST 17, 2009 - 6:00 pm PDT

**STATE OFFICE BUILDING
3rd Floor Conference Room
1118 "F" St., Lewiston, 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 summary of this action is found in the July 1, 2009, Idaho Administrative Bulletin, Vol. 09-7, pages 46 and 47.

In order to meet legislative intent for Medicaid cost containment measures in House Bill 322 for the state fiscal year 2010, the Department is implementing changes in this chapter of rule to provide provisions for cost-sharing for Home Care for Certain Disabled Children (HCCDC) also known as Katie Beckett. The premium and actual cost-sharing amounts are provided under IDAPA 16.03.18. "Medicaid Cost-Sharing," Docket No. 16-0318-0901, published in the July 1, 2009, Idaho Administrative Bulletin."

Docket 16-0305-0902, published in the July 1, 2009, Idaho Administrative Bulletin," Vol. 09-7, pages 46 and 47.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Robin Pewtress at (208) 364-1892.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Friday, August 21, 2009.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 17th day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0903

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of these temporary rules are March 1, 2009, March 11, 2009, April 1, 2009, and July 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 Section 56-202, Idaho Code, Public Law 111-8, the American Recovery and Reinvestment Act of 2009, CHIP Reauthorization Act of 2009, and 20 CFR 416.1233.

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 August 19, 2009.

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

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

In order to reduce costs, the Department worked with the Social Security Administration (SSA) concerning the State Supplemental Payment (SSP) program which is a state-funded program that provides financial aid to the aged, blind, and disabled population in Idaho. The Department amended this chapter under temporary rule Docket No. 16-0305-0901 published in the February 4, 2009, Idaho Administrative Bulletin, Vol. 09-2, pages 12-19. The temporary rule allowed the state to remain in compliance with SSA federal regulations and reduce costs. The original temporary rules are being rescinded in this Bulletin, and republished as temporary and proposed rules under this Docket No. 16-0305-0903 with the same effective dates.

This new docket includes all changes made in the original temporary rules, as well as the following changes made to align these rules with federal regulations:

1. Extension of Afghani immigrant benefits under P.L. 111-8;
2. Resources excluded under the American Recovery and Reinvestment Act of 2009;
3. Citizenship documentation requirements and newborns deemed eligible under the CHIP Reauthorization Act of 2009; and
4. Lump sum payments for retroactive Social Security benefits under 20 CFR 416.1233.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of his order to reduce cost and to align these rules with federal regulations.

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 anticipated fiscal impact for capping the State Supplemental Payment is a net cost savings over a 12-month period of \$1,093,920 in state general funds. The anticipated fiscal impact for aligning AABD citizenship rules with SSA regulations is a net cost savings over a 12-month period of \$24,080 in state general funds. There is no anticipated fiscal impact to state general funds for the new changes aligning these rules with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these cost saving measures are being required to meet legislative intent.

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 August 26, 2009.

DATED this 2nd day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0305-0903

102. ~~103.~~ (RESERVED).

1043. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

The applicant must provide his social security number (SSN) or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. An applicant with an unverified SSN is not eligible for AABD cash or Medicaid benefits. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (3-20-04)

01. Application for SSN. To be eligible, the applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

02. Failure to Apply for SSN. The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-20-04)

- a.** Is a member of a recognized religious sect or division of the sect; and (3-20-04)
- b.** Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (3-20-04)

03. SSN Requirement Waived. An applicant may have the SSN requirement waived when he is: (3-20-04)

- a.** Only eligible for emergency medical services as described in Section 801 of these rules; or

(3-20-04)

- b. A newborn child deemed eligible as described in Section 800 of these rules. (4-2-08)

1054. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 1054.09 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. ~~(4-2-08)~~(3-1-09)T

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)

d. A document issued by a federally-recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. ~~(4-2-08)~~(4-1-09)T

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 1054.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
i. United States fifty (50) states; (3-30-07)
ii. District of Columbia; (3-30-07)
iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
iv. Guam, on or after April 10, 1899; (3-30-07)
v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
vi. America Samoa; (3-30-07)
vii. Swain's Island; or (3-30-07)
viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
e. A Northern Mariana Identification Card, Form I-873; (3-30-07)
f. An American Indian Card issued by the Department of Homeland Security with the classification

- code "KIC," Form I-873; (3-30-07)
- g.** A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
 - h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
 - i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
 - j.** A certification of birth abroad, FS-545; (4-2-08)
 - k.** A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
 - l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; (4-2-08)
- b.** A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; (4-2-08)
- c.** A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization; or (4-2-08)
- d.** An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child's parents. (4-2-08)

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 1054.01 through 1054.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a.** Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b.** One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)
 - ~~i.~~ ~~Seneca Indian tribal census record;~~ ~~(3-30-07)~~
 - ~~ii.~~ Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
 - ~~iii.~~ U.S. State vital Statistics official notification of birth registration; (3-30-07)
 - ~~iv.~~ ~~ii.~~ A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth; (4-2-08)

- iv. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
- vi. Medical (clinic, doctor, or hospital) record; (3-30-07)
- vi. Institutional admission papers from a nursing facility, skilled care facility or other institution; (4-2-08)
- vii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (4-2-08)
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)
 - i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
 - ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
 - iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)
 - iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 1054.02 through 1054.04 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)
- b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 1054.05.a. of this rule; ~~(3-30-07)~~(3-1-09)T
- c. School identification card with a photograph of the individual; (3-30-07)
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast guard Merchant Mariner card; (3-30-07)
- ~~g. Certificate of Degree of Indian blood; (4-2-08)~~
- ~~h. Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual; (4-2-08)~~
- ig. A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (4-2-08)
- jh. A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 1054.05.a. through 1054.05.i. of this rule. ~~(4-2-08)~~(3-1-09)T

06. Additional Documents Accepted for Proof of Identity. If the participant provides citizenship documentation as described in Subsections 1054.02 or 1054.03 of this rule, three (3) or more corroborating documents may be used to prove identity. ~~(4-2-08)~~(3-1-09)T

07. Identity Rules for Children. The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

a. School records may be used to establish identity. Such records also include nursery or daycare records. (3-30-07)

b. Clinic, doctor, or hospital records. (4-2-08)

c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 1054.02 of this rule are not available. A declaration may be used if it meets the following conditions: ~~(3-30-07)~~(3-1-09)T

i. It states the date and place of the child's birth; and (3-30-07)

ii. It is signed by a parent or guardian. (3-30-07)

d. A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 1054.05.a. through 1054.05.c. of this rule are not available. ~~(4-2-08)~~(3-1-09)T

e. A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

08. Eligibility for Applicants and Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation. (3-30-07)

a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation; (3-30-07)

b. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

i. Does not meet other eligibility criteria required in this chapter of rules; or (3-30-07)

ii. Refuses to obtain the documentation. (3-30-07)

09. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements. The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 1054.01 through 1054.08 of this rule is provided: ~~(4-2-08)~~(3-1-09)T

a. Supplemental Security Income (SSI) recipients; (4-2-08)

b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (4-2-08)

c. Social Security Disability Income (SSDI) recipients; and (4-2-08)

d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act. (4-2-08)

e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules. (4-1-09)T

10. Assistance in Obtaining Documentation. The Department will assist individuals who are

mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)

11. Provide Documentation of Citizenship and Identity One Time. When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

1065. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 1065.01 through 1065.17 of ~~these~~ this rules. An individual must also provide proof of identity as provided in Section 1054 of these rules. ~~(5-8-09)~~(3-1-09)T

- 01. U.S. Citizen.** A U.S. Citizen. (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. National, National of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
- a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
 - b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
 - c.** The child is under eighteen (18) years of age; (3-30-07)
 - d.** The child is a lawful permanent resident; and (3-30-07)
 - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)
- 07. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (3-30-07)
- a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)
 - b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)
 - c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C.

1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry. (3-30-07)

08. Qualified Non-Citizen Entering on or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

09. American Indian Born in Canada. An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

10. American Indian Born Outside the U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

12. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

a. Is under the age of eighteen (18) years; or (3-20-04)

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

13. Qualified Non-Citizen Receiving Supplement Security Income (SSI). A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

14. Permanent Resident Receiving AABD Cash On August 22, 1996. A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

15. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, are eligible for ~~six~~ eight (68) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)~~(3-11-09)T

16. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)

17. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements. Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 1065.01 through 1065.16 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. ~~(5-8-09)~~(3-11-09)T

106. QUALIFIED NON-CITIZEN ELIGIBILITY REQUIREMENTS FOR AABD CASH.

01. Eligibility Requirements for AABD Cash Beginning March 1, 2009. Beginning with applications dated March 1, 2009, to be eligible for AABD cash assistance, a qualified non-citizen must meet the requirements in Section 105 of these rules and must meet the eligibility requirements for Supplemental Security Income (SSI) payments. (3-1-09)T

02. Receiving AABD Cash Prior to March 1, 2009. A qualified non-citizen who was eligible for and received an AABD cash payment for February 2009, but does not meet the SSI eligibility requirements, will continue to receive an un-capped cash benefit as long as all other eligibility requirements are met until one (1) of the following occurs: (3-1-09)T

a. A break in the qualified non-citizen's AABD cash payment occurs because he failed to complete a redetermination for benefits; or (3-1-09)T

b. The qualified non-citizen has not become a naturalized citizen and two (2) years have passed from March 1, 2009, and he does not meet the eligibility requirements for SSI payments. (3-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

210. RESOURCES EXCLUDED BY FEDERAL LAW.

A resource excluded by federal law is not counted in determining the resource amount available to the participant. (7-1-09)T

210~~1~~. -- 214. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

242. ~~TRUST OR RESTRICTED INDIAN LANDS PROPERTY EXCLUDED.~~

~~Restricted allotted land, owned by a participant who is of Indian descent from a Federally recognized Indian tribe, is an excluded resource if the participant cannot sell, transfer or otherwise dispose of it without permission from other participants, his tribe or an agency of the Federal Government.~~ For the purposes of determining eligibility for an individual who is an Indian, the following property is excluded: (7-1-99)(7-1-09)T

01. Property. Real property and improvements located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs. (7-1-09)T

02. Natural Resources. Ownership interest in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally protected rights. (7-1-09)T

03. Other Ownership Interests or Usage Rights. Ownership interests in or usage rights to property not covered by Subsections 242.01 or 242.02 of this rule that have a unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to applicable tribal law or custom. (7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

255. RETROACTIVE SSI AND AABD BENEFITS.

Retroactive SSI and AABD benefits are issued after the calendar month for which they are paid. Retroactive AABD, SSI and RSDI benefits are excluded from resources for ~~six~~ nine (69) calendar months after the month they are

received. Interest earned by excluded funds is counted as income.

~~(7-1-99)~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

500. FINANCIAL NEED AND AABD CASH AMOUNT.

01. Meet Eligibility for Financial Need. To be eligible for AABD cash and Medicaid, the participant must have financial need. The participant has financial need if his allowances, as described in Sections 501 through 513 of these rules, are more than his income. The amount of financial need is the amount that the allowances exceed income. (3-1-09)T

02. Maximum Monthly AABD Cash Payment. If the participant is eligible, his AABD cash payment is the difference between his financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. The maximum monthly AABD cash payment, for a participant described in Subsections 501.01 and 501.02 of these rules, is fifty-three (\$53) dollars. AABD cash is paid electronically as set forth in IDAPA 16.03.20, "Rules Governing Electronic Payments (EP) of Public Assistance, Food Stamps, and Child Support." ~~(3-30-07)~~(3-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

800. NEWBORN CHILD OF MEDICAID MOTHER.

A child is deemed eligible for Medicaid without an application if born to a woman receiving Medicaid on the date of the child's birth. ~~The child must live with his mother. She must be eligible for Medicaid, or would be, if pregnant.~~ The child remains eligible for Medicaid for up to one (1) year without an application. An application for Medicaid must be filed on behalf of the child no later than his first birthday. He must qualify for Medicaid in his own right after the month of his first birthday. ~~(7-1-99)~~(4-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.18 - MEDICAID COST-SHARING

DOCKET NO. 16-0318-0901 (FEE RULE)

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 56-202, 56-239, and 56-240, Idaho Code, and Title XXI of the Social Security Act

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

MONDAY - AUGUST 17, 2009 - 6:00 pm PDT

**STATE OFFICE BUILDING
3rd Floor Conference Room
1118 "F" St., Lewiston, 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 summary of this action is found in the July 1, 2009, Idaho Administrative Bulletin, Vol. 09-7, pages 74 through 77.

In order to meet legislative intent for Medicaid cost containment in House Bill 322 for the state fiscal year 2010, the Department is implementing changes in this chapter to add a cost-sharing premium for Home Care for Certain Disabled Children (HCCDC) also known as Katie Beckett. These requirements implement cost-sharing in the form of a monthly payment based on family income that is remitted to the Department each month. Failure to pay will not affect the child's eligibility, but may result in collection procedures that are also being identified in these rules.

Docket 16-0318-0901, published in the July 1, 2009, Idaho Administrative Bulletin," Vol. 09-7, pages 74 through 77.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Robin Pewtress at (208) 364-1892.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Friday, August 21, 2009.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 17th day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.13 - LIFE SETTLEMENTS

DOCKET NO. 18-0113-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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 41-211 and 41-1965, 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 August 19, 2009.

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

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

This rulemaking implements House Bill 75, the Idaho Life Settlements Act, which became effective July 1, 2009. It sets forth procedures for registering as a life settlement broker or provider, requirements for filing with the Department of Insurance life settlement contracts, disclosure forms and advertising materials, sets forth disclosure requirements, and clarifies the process for rescinding a life settlement contract and requirements for life settlements that occur within two years of the policy effective date.

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 reason: The rule is necessary to implement a change to the governing law that took effect July 1, 2009.

FEE SUMMARY: The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is required by a change to the governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest at 208-334-4214 or Shad.Priest@doi.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

William W. Deal, Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 18-0113-0901

IDAPA 18
TITLE 01
CHAPTER 13

18.01.13 - LIFE SETTLEMENTS

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the director under Sections 41-211 and 41-1965, Idaho Code. (8-1-09)T

001. TITLE AND SCOPE.

01. Title. This Rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.13, "Life Settlements." (8-1-09)T

02. Scope. This rule sets forth requirements regarding the sale and settlement of life insurance contracts where the owner of the contract is an Idaho resident. (8-1-09)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (8-1-09)T

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General - General Provisions. (8-1-09)T

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. (8-1-09)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (8-1-09)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (8-1-09)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (8-1-09)T

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. (8-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. (8-1-09)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Advertising Materials. (8-1-09)T

a. Printed and published material, audio visual material, and descriptive literature of a broker or provider used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other internet displays or communications, other forms of electronic communications, billboards and similar displays; (8-1-09)T

b. Descriptive literature and sales aids of all kinds issued by a provider or broker for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and (8-1-09)T

c. Prepared sales talks, presentations and material for use by providers and brokers. (8-1-09)T

02. Affiliation. For purposes of this rule and the Life Settlements Act, an affiliation shall include any contractual relationship outside of the proposed life settlement contract, any ownership interest or relation, any familial relation, an employment relation, any relationship creating financial dependency, any arrangement that provides one party the ability to control or influence the actions of another party, or any other arrangement or relationship that might reasonably result in parties treating one another in a less than arm's length manner. (8-1-09)T

03. Broker. A life settlement broker as defined at section 41-1951(7), Idaho Code. (8-1-09)T

04. Operating as a Broker. A person is operating as a broker if the person, for a fee, commission or other valuable consideration, offers or attempts to negotiate a life settlement contract between an owner who is a resident of Idaho and one or more providers. A person working on behalf of a broker by offering or attempting to negotiate a life settlement contract for a fee, commission or other valuable consideration is operating as a broker regardless of whether the person has a direct contractual relationship with the owner. (8-1-09)T

05. Operating as a Provider. A person is operating as a provider if the person offers to enter into or attempts to effectuate a life settlement contract with an owner who is a resident of Idaho. A person attempting to effectuate a life settlement contract on behalf of a provider is also operating as a provider regardless of whether the person will be a party to the life settlement contract. (8-1-09)T

06. Owner. A life insurance owner or certificate holder as defined at section 41-1951(9), Idaho Code. (8-1-09)T

07. Provider. A life settlement provider as defined at section 41-1951(8), Idaho Code. (8-1-09)T

011. REGISTRATION REQUIRED TO OPERATE AS LIFE SETTLEMENT PROVIDER OR LIFE SETTLEMENT BROKER.

01. Producer License Required. No person shall operate as a broker or provider unless the person is first licensed with the Department of Insurance as a producer authorized to transact the business of life insurance in Idaho. (8-1-09)T

02. Registration Required. Not later than ten (10) days after first operating as a provider or broker a person shall notify the Director that he is acting as a provider or broker by registering with the Department and paying applicable fees as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges". Registration shall be in writing and shall be in the form and include information as required by the Director along with a certification from the applicant that he has read and familiarized himself with the requirements of Sections 41-1950 through 41-1965, Idaho Code, and these rules. (8-1-09)T

03. Renewal of Registration. Registration as a broker or provider shall continue until the next renewal date of the person's producer license. If the initial registration takes place within ninety (90) calendar days from the producer license expiration date, registration shall continue until the following producer license renewal date.

Registration may be renewed by payment of the applicable renewal fee as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges". An insurance producer who allows his registration as a broker or provider to lapse may, within twelve (12) months from the renewal due date, reinstate the registration by paying a penalty in the amount of double the unpaid renewal fee. If a registration is allowed to lapse for more than twelve (12) months without reinstatement, a producer wishing to act a broker or provider shall re-register with the Department and pay the applicable registration fee prior to operating as a broker or provider. (8-1-09)T

012. FILING OF FORMS.

01. Filing of Life Settlement Contracts and Disclosure Forms. No person shall use a life settlement contract or disclosure form in Idaho unless the form is first filed with the Department along with a certification that the form meets the requirements of Sections 41-1950 through 41-1965, Idaho Code. The certification shall be in the form as prescribed by the Director and signed by a person registered as a provider or broker. (8-1-09)T

02. Filing of Advertising Materials. No person shall use advertising materials promoting or advertising the availability of life settlements or life settlement services in Idaho unless the materials are first filed with the Department. If the advertising is not in written form, a written script shall be filed. All advertising relating to the business of life settlements shall have a unique identifying form number in the lower left hand corner of the advertising piece and shall comply the following standards: (8-1-09)T

a. Be truthful and not misleading in fact and implication. All information shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading. (8-1-09)T

b. Reference the complete form number of any life settlement contract being advertised and clearly identify the full and complete name of the provider or broker using the promotional material. Advertising materials shall not use a trade name, any insurance group designation, name of the parent company of the provider or broker, name of a particular division of the provider or broker, service mark, slogan, symbol or other device which would have the capacity and tendency to mislead or deceive as to the true identity of the provider or broker without disclosing the name of the actual provider or broker using the advertising material. (8-1-09)T

c. No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving sellers or prospective sellers as to the nature or extent of any policy benefit payable. The fact that the contract offered is made available to a prospective seller for inspection prior to consummation of the sale or an offer is made to rescind the life settlement contract if the seller is not satisfied, does not remedy misleading statements. (8-1-09)T

d. Advertising materials shall not use words or phrases in a manner which exaggerates any benefits beyond the terms of the life settlement contract and shall fairly and accurately describe the negative features as well as the positive features of the life settlement contract and life settlement program. An advertisement shall not represent or imply that life settlements by the provider are "liberal" or "generous," or use words of similar import, or that benefits of a life settlement are or will be beyond the actual terms of the life settlement contract. (8-1-09)T

e. Advertising materials shall not be designed to encourage or promote the purchase of life insurance for the purpose of transferring ownership through a life settlement contract. (8-1-09)T

f. An advertisement shall not create the impression directly or indirectly that a provider, a broker, its financial condition or status, a life settlement contract or program, or the payment of life settlement benefits is approved, endorsed, or accredited by any division or agency of this state or the United States Government. (8-1-09)T

g. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the life settlement contract advertised and be accurately reproduced. A provider or broker using a testimonial makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the provider or broker, or a related entity as a stockholder, director, officer, employee, or

otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." (8-1-09)T

- h.** The source of any statistics used in an advertisement shall be identified in the advertisement. (8-1-09)T

03. Font Size for Printed Materials. Pertinent text of all printed materials required to be filed with the director under the Life Settlement Act, including, but not limited to, notices, disclosure forms, contract forms, and advertising material, is required to be formatted using at least a twelve (12) point font. Signature blocks, footnotes or text not relevant to the understanding of the printed material may be printed in a smaller font, but in no case smaller than a ten (10) point font. (8-1-09)T

04. Disapproval of Noncompliant Forms. The Director may disapprove for use in Idaho any form required to be filed pursuant to this Section if, in the opinion of the Director, the form does not comply with any part of Title 41, Idaho Code, or these rules, or the form is unreasonable in its terms, contrary to the interests of the public, misleading to the public, unfair to the owner, or is printed or provided in a manner making any part of the form substantially illegible. (8-1-09)T

013. ANNUAL REPORTING REQUIREMENTS.

All persons registered with the Director as a provider shall file with the Director, on or before March 1st of each year, an annual statement in the form and containing information as set forth at Appendix A. The forms are available from the Department of Insurance. An annual report is required regardless of whether any life settlement contracts with Idaho owners were executed during the year. (8-1-09)T

014. EXAMINATION AND RECORDS.

Brokers and providers are subject to examination by the Director in accordance with Chapter 2, Title 41, Idaho Code, and shall pay, at the direction of the Director, the actual travel expenses, reasonable living expense allowance, and reasonable compensation incurred on account of the examination upon presentation of a detailed account of the charges and expenses. (8-1-09)T

015. REQUIRED DISCLOSURES TO OWNER.

01. Disclosure to Owner Upon Application. A broker or provider shall not provide an owner with an application for a life settlement contract unless the owner has also been provided a disclosure form containing all the information required by Idaho Code, 41-1956 and in substantially the same form as set forth at Appendix B. The disclosures shall be provided in a separate document in at least twelve (12) point font. Each page of the disclosure document shall be initialed by the owner indicating that it has been received and read by the owner, and the final page shall be dated and signed by the owner and the broker or provider that delivered the disclosure document to the owner. (8-1-09)T

02. Disclosures to Owner by Provider Upon Settlement. Prior to the time an owner signs a life settlement contract, the provider shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1957 and in substantially the same form as set forth at Appendix C. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest of the contract on a separate page or as a separate section using at least twelve (12) point font and with a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the provider. (8-1-09)T

03. Disclosure to Owner by Broker Upon Settlement. Prior to the time an owner signs a life settlement contract, the broker shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1958 and in substantially the same form as set forth at Appendix D. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest

of the contract on a separate page or as a separate section using at least twelve (12) point font, and a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the broker. (8-1-09)T

04. Affiliations to be Disclosed. As a part of the disclosures required under this Section, a provider shall disclose in writing to the owner any affiliation between the provider and the issuer of the insurance policy to be settled, and a broker shall disclose in writing any affiliation or contractual arrangement between the broker and any person making an offer in connection with a proposed life settlement contract. (8-1-09)T

016. ADDITIONAL REQUIREMENTS.

01. Owner's Statement. (8-1-09)T

a. Prior to entering into a life settlement contract, the provider shall obtain from each owner a written statement in substantially the following form: "I, [owners name], have freely and voluntarily consented to the life settlement contract that accompanies this statement. I have carefully read my insurance policy that is the subject of the life settlement contract and I understand the benefits that are available under the policy. I further understand that by entering into the life settlement contract, the right to benefits under the insurance policy will be sold to another party and I, my heirs or former beneficiaries will no longer have any right to receive those policy benefits." (8-1-09)T

b. If the owner has a terminal or chronic illness, the following wording shall also be included in the owner's statement: "I am currently suffering from a terminal or chronic illness that was not diagnosed until after the policy that is the subject of the life settlement contract was issued." (8-1-09)T

c. The statement of the owner must also be acknowledged by a notary public. (8-1-09)T

02. Owner's Right to Rescind Life Settlement Contract. (8-1-09)T

a. The life settlement contract shall conspicuously inform the owner in bold type of at least twelve (12) point font that the owner has an absolute right to rescind a life settlement contract within twenty (20) calendar days of the date the contract is executed and shall set forth the manner in which notice is to be given. (8-1-09)T

b. Upon being informed of the owner's intention or desire to rescind a life settlement contract, the provider shall immediately provide the owner with a full accounting of the amount that must be repaid by the owner in order to rescind the policy. The amount due shall include only amounts actually paid to and received by the owner pursuant to the terms of the life settlement contract along with any premiums, loans and loan interest paid by or on behalf of the provider in connection with or as a direct consequence of the life settlement contract. An owner shall not be required to pay any financial penalties, liquidated damages or other punitive fees or charges in connection with rescission of a life settlement contract. (8-1-09)T

c. Until the owner receives from the provider an accounting of the full and correct repayment amount needed to rescind the life settlement contract, a tender of payment by the owner of amounts actually received and reasonably believed to be due upon rescission shall be deemed substantial compliance with the requirement of notice and repayment of proceeds within the twenty (20) day rescission period. (8-1-09)T

03. Life Settlements Occurring Within Two (2) Years of Policy Origination. (8-1-09)T

a. No broker or provider shall solicit, arrange for or enter into a life settlement contract within two (2) years of the date of issuance of the life insurance policy or certificate being settled unless one (1) or more of the conditions identified in Section 41-1961, Idaho Code, applies. If one (1) or more of the conditions is present, the provider shall obtain from the owner a written statement sworn before a notary public setting forth in detail the circumstances permitting the early settlement of the contract. The sworn statement shall also include the following or substantially similar wording: "I hereby affirm that there was no plan or arrangement in place or under discussion, or any promises made, regarding the settlement of this life insurance policy at the time the policy was purchased."

(8-1-09)T

b. In addition to the sworn statement, the provider shall obtain and retain as a part of its records independent documentation of the circumstances permitting early settlement of the life insurance policy along with all documentation relating to any premium financing arrangements made in connection with the policy being settled. (8-1-09)T

c. The sworn statement and copies of all supporting documentation shall be provided to the insurer at the time a request for verification of coverage is submitted to the insurer. A request for verification of coverage relating to a policy or certificate that has been in effect for two (2) years or less will be considered incomplete if it is not accompanied by the owner's sworn statement and supporting documentation, and the insurer shall promptly inform the provider or broker submitting the request for verification form that the form will not be considered complete until the sworn statement or other necessary supporting documentation is received. (8-1-09)T

017. -- 999. (RESERVED).

Appendix A-1
Life Settlement Provider Report - Idaho Transactions Only

Report year: _____

Life Settlement provider's name: _____

Name, address and telephone number of contact person for this report: _____

Email address: _____

Applications (#'s): Settled _____ Rejected _____

Pending _____ Pending _____ **Total applications:** _____

	SEE INSTRUCTIONS	Contract #1	Contract #2	Contract #3	Contract #4	Contract #5
1	Life settlement provider settlement number					
2	Life settlement contract purchased date					
3	Date policy initially purchased by owner					
4	Was policy premium financed prior to purchase? Y or N ?					
5	List the ownership type of the policy					
6	Owner's or insured's reason for selling if less than 2 years					
7	Age of insured at time of contract					
8	Each life expectancy (in months) at time of contract					
9	Insurance company name and NAIC number					
10	Total net death benefit (\$)					

11	Net amount paid to the seller of the policy (\$)					
12	Policy type: individual or group					
13	Type of funding for transaction F, P, I, T or RPT (see instructions)					
14	What is the product type?					
15	Date proceeds transferred to escrow/trust account					
16	List escrow agent or trust institution along with account number					
17	Purchase source of policy: B, D, SM, P or O (see instructions)					
18	Name of the source of the transaction					
19	Commission amount paid to source (\$)					
20	Date disclosures per Sections 41-1956 & 41-1957, Idaho Code made to owner					
21	Date ownership transferred by provider and name of new owner					
22	Total premiums paid in report year to maintain policy					
23	Date of authorization for release of medical information					

I _____, the undersigned _____ of _____ the reporting entity, first being duly sworn, state and affirm that I am the described officer, manager or employee of the reporting entity and that the information contained in this report is complete, true and accurate.

 By (printed name)

 Signature

 (title)

State of _____

County of _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____.

Notary Public _____

My commission expires on: _____

Appendix A-2

Life Settlement Provider Report Idaho Insureds Only Instructions
NOTE: This form must be accompanied by the Life Settlement Provider Certification Form. See Chapter 19 on Idaho Department of Insurance Web site: http://www.legislature.idaho.gov/idstat/Title41/T41.htm ATTACH A SEPARATE SHEET IF NECESSARY
Question 1. List the settlement number, case number or unique identifying number used to identify this specific life settlement transaction.
Question 2. List the date the life settlement contract was purchased by the provider during the current calendar year, whether or not the insured is still alive at the end of the calendar year.
Question 3. List the date the owner of the policy originally initiated coverage.
Question 4. Was the policy being purchased previously financed? Yes or No.
Question 5. List the ownership type of the policy, such as trust, corporate or individually owned.
Question 6. If the difference between the date shown in question 3 and the date shown in question 2 is less than 2 years, provide the reason the contract was sold. In accordance with Section 41-1961, Idaho Code, use "a" if exercise of conversion rights, "bi" if terminally/chronically ill, "bii" if owner's spouse dies, "biii" if owner divorces spouse, "biv" if owner retires, "bv" if owner becomes disabled and cannot work fulltime, "bvi" if owner decreed bankrupt or insolvent, or "O" for other and provide an explanation.
Question 7. List the age (in years) of the person insured by the policy being sold at the time of the life settlement contract.
Question 8. List the life expectancy (LE) in months of the person insured at the time of the life settlement contract. If more than one LE was ordered, provide individual information on each LE.
Question 9. List the name of the insurance company along with its NAIC company code number.
Question 10. List the net amount (in dollars) for the policy being sold.
Question 11. List the net amount (in dollars) paid to the seller of the policy.
Question 12. Identify whether the policy was an individual policy (I) or a group policy (G).
Question 13. List the type of funding for the transaction: "F" for a licensed financial institution (policies collateralized), "P" for private (purchaser) funding, "I" for internal funding, "T" for trust, and "RPT" for related provider trust.
Question 14. What is the product type? Term, UL, SUL, VUL, SVUL, WL, SWL, etc.
Question 15. List the date the proceeds of the agreement are paid or transferred to an escrow or trust account
Question 16. List the name of the escrow agent and the account number, or provide the trust institution and account number.
Question 17. Indicate the purchase source of the policy. Use "B" for life settlement broker, "D" for direct from the insured or owner, "I" for insurance agent/producer, "SM" for a secondary market or life settlement provider, "P" for private (purchaser) funding or "O" for other and provide an explanation.
Question 18. List the name of the source of the life settlement transaction. If it is a broker, producer or other licensee, name that person; if it is direct, from a relative, from the corporation of the insured or any other entity that could possibly reveal the insured, designate by writing "Direct," "Relative," "Corporation" or other non-designating word.

Question 19. List the amount of commissions (in dollars) paid to the source involved in the transaction whether that is a life settlement broker, an insurance producer or other licensed entity authorized to be a life settlement source.
Question 20. List the date the disclosures required by Idaho Code §§41-1956 and 1957 were made to the owner/seller of the policy. This includes but is not limited to alternatives to life settlement contracts, tax consequences and rights of owners.
Question 21. If the provider transferred ownership of life settlement contract, list the date the transfer occurred and provide the name of the new owner. If not applicable show "N/A".
Question 22. List the total amount of premiums (in dollars) paid to the insurer to maintain the policy during the report period.
Question 23. Date the authorization for release of medical information was signed by the insured.

Appendix A-3

Life Settlement Provider Report- Idaho Transactions Only						
SUPPLEMENTAL REPORT						
Complete this section ONLY if death benefit proceeds were paid						
Report year: _____						
Life Settlement provider's name: _____						
Name, address and telephone number of contact person for this report:						
Email address:						
SEE INSTRUCTIONS	Contract #1	Contract #2	Contract #3	Contract #4	Contract #5	
1	Life settlement provider settlement number					
2	Life settlement contract purchased date					
3	Age of insured at time of contract					
4	Life expectancy at time of contract					
5	Net amount paid to owner/ seller (\$)					
6	Insured's date of death					
7	Number of months between contract date and date of death.					
8	Number of months between life expectancy at time of contract and date of death (+/-)					
9	Death benefit collected					
10	Total premiums paid to maintain policy (\$)					

I _____, the undersigned _____ of the reporting entity, first being duly sworn, state and affirm that I am the described officer, manager or employee of the reporting entity and that the information contained in this report is complete, true and accurate.

Signature _____
(title)

By (printed name) _____

State of _____

County of _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____.

Notary Public

My Commission expires on:

Appendix A- 4

SUPPLEMENTAL REPORT INSTRUCTIONS

Complete this section ONLY if death benefit proceeds were paid

Question S1. List the settlement number, case number or unique identifying number used to identify this specific life settlement transaction.

Question S2. List the date the life settlement contract was purchased by the provider.

Question S3. List the age (in years) of the person insured by the policy being sold at the time of the life settlement contract.

Question S4. List the life expectancy (in months) of the person insured by the policy being sold at the time of the life settlement contract.

Question S5. List the net amount (in dollars) paid to the policy owner/seller.

Question S6. Date of death of the person insured by the policy.

Question S7. List the difference (in months) between the date shown in question S2 and the date shown in question S6.

Question S8. List the number of months between the life expectancy of the Insured at the time of contract and the insured's date of death. This should be noted as a plus (+) figure if the insured died after the estimated life expectancy or a minus (-) if the insured died prior to the estimated life expectancy.

Question S9. Total amount of death benefit collected.

Question S10. List the total amount of premiums (in dollars) paid to the insurer to maintain the policy, from the Life Settlement contract date to the date of death.

Appendix B

DISCLOSURE TO OWNER

(To be provided no later than at time of application for any life settlement agreement)

(With acknowledgement of life settlement provider or broker)

IMPORTANT – READ THIS DISCLOSURE FORM AND THE ENCLOSED LIFE SETTLEMENT INFORMATION BROCHURE BEFORE SIGNING ANY LIFE SETTLEMENT AGREEMENT.

You should carefully read all of the following points and seek financial, insurance, tax and other advice where appropriate.

1. Possible alternatives to life settlement contracts include any accelerated death benefits or policy loans offered under your life insurance policy.
2. A life settlement broker exclusively represents you, the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.
3. Some or all of the proceeds of the life settlement may be taxable under federal and state law, and assistance should be sought from a professional tax advisor.
4. Proceeds of the life settlement could be subject to the claims of your creditors.
5. Receipt of the proceeds of a life settlement may adversely affect your eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
6. You have the right to rescind (cancel) a life settlement contract within twenty (20) days of the date it is signed by all parties. If you want to rescind the contract, you must provide notice to the life settlement provider and repay all proceeds and any premiums, loans and loan interest paid on account of the life settlement contract within the twenty (20) day rescission period. If the insured dies during the twenty (20) day rescission period, the life settlement contract will be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all life settlement proceeds and any premiums, loans and loan interest.
7. Funds will be sent to you within three (3) business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
8. Entering into a life settlement contract may cause you to forfeit other rights or benefits including conversion rights and waiver of premium benefits that may exist under the policy or certificate. Assistance should be sought from a financial adviser.

Policy Owner's Initials: _____

9. You will be provided a brochure approved for use by the Department of Insurance that describes the process of life settlements. You should review this brochure carefully.
10. All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years.
11. Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in sections 41-1950 through 41-1965, Idaho Code. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less. All such contacts shall be made only by a life settlement provider licensed in the state of Idaho.
12. If you have any questions, you may call the Idaho Department of Insurance at 800-721-3272 or 208-334-4250.

LIFE INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this disclosure form. I have received copies of this disclosure form and the life settlement information brochure to keep for my records.

LIFE INSURANCE POLICY OWNER

LIFE SETTLEMENT PROVIDER OR BROKER

By: _____

By: _____

Printed Name

Printed Name/Title

Date: _____

Date: _____

JOINT LIFE INSURANCE POLICY OWNER

By: _____

Printed Name

Date: _____

Appendix C

LIFE SETTLEMENT PROVIDER'S DISCLOSURE TO OWNER UPON SETTLEMENT

**IMPORTANT – READ THIS DISCLOSURE FORM BEFORE
SIGNING ANY LIFE SETTLEMENT CONTRACT.**

The life settlement provider must provide you with at least the following disclosures prior to signing of the life settlement contract. You should carefully read all of the following points and seek financial, insurance, tax and other advice where appropriate.

1. The person or entity identified on this form is acting as a life settlement provider and does not represent you.
2. The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled is:

None

3. The name, business address and telephone number of the life settlement provider are as follows:
4. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the possibility of loss of coverage on the other lives under the policy exists. If this is the case, the insurance producer or the insurer issuing the policy should be consulted for advice on the proposed life settlement.

The insurance policy DOES NOT provide coverage to any person other than the insured.

The insurance policy DOES provide coverage to other persons as follow:

Policy Owner's Initials: _____

5. The current death benefit payable under insurance policy or certificate number _____ issued by _____ is: \$ _____

The availability of additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which your interest in these benefits will be transferred as a result of the life settlement contact are:

Unknown

6. You may inspect or receive copies of the relevant escrow, trust agreements or other documents by contacting the independent third party escrow agent. You may contact that agent at (name, business address, telephone number):

INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this Disclosure form, and I have received a copy of this form to keep for my records.

LIFE INSURANCE POLICY OWNER

JOINT LIFE INSURANCE POLICY OWNER

By: _____

By: _____

Printed Name _____

Printed Name _____

Date: _____

Date: _____

LIFE SETTLEMENT PROVIDER

This form was prepared by: _____

Printed Name/Title

Date: _____

Appendix D

LIFE SETTLEMENT BROKER'S DISCLOSURE FORM

IMPORTANT – READ THIS DISCLOSURE FORM BEFORE SIGNING ANY LIFE SETTLEMENT CONTRACT.

The life settlement broker is representing you in this transaction and has a duty to act in your best interest.

The life settlement broker must provide you with at least the following disclosures prior to the time you sign the life settlement contract. You should carefully read all the following points and seek financial, insurance, tax and other advice where appropriate.

1. The name, business address and telephone number of the life settlement broker are as follows:

2. A full, complete and accurate description of all offers, counteroffers, acceptances and rejections relating to the proposed life settlement contract (including name of party, date made, price and any other material terms) is:

Attached

As follows:

3. The affiliation or contractual arrangements between the life settlement broker and any person making an offer in connection with a proposed life settlement contract are as follows:

None

Attached

Policy Owner's Initials: _____

4. The amount, method of calculation and the party who is responsible for paying the broker's compensation are listed below. The term "compensation" includes anything of value to be paid or given to a life settlement broker for the placement of a policy.
5. Where any portion of the life settlement broker's compensation is taken from a proposed life settlement offer, the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement broker's compensation are:

N/A

LIFE INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this disclosure form and have received a copy to keep for my records.

LIFE INSURANCE POLICY OWNER

JOINT LIFE INSURANCE POLICY OWNER

By: _____

By: _____

Printed Name _____

Printed Name _____

Date: _____

Date: _____

LIFE SETTLEMENT BROKER

This form was prepared by: _____

Printed Name/Title _____

Date: _____

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-0901

NOTICE OF RULEMAKING

ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is July 1, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 41-211, Idaho Code and Chapter 44, Title 41, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary 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:

Three modifications are being made to the rule to maintain uniformity with the National Association of Insurance Commissioners' Medicare Supplement Minimum Standards Model Act, and to further maintain compliance with the federal requirements contained in the Genetic Information Nondiscrimination Act, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 and the Medicare Improvements for Patients and Provider Act of 2008.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only those sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 58 through 100.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Joan Krosch at 208-334-4300.

DATED this 1st day of July, 2009

Shad Priest, Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

DOCKET NO. 18-0154-0901 - ADOPTION OF PENDING RULE
AND AMENDMENT TO TEMPORARY RULE

Substantive changes have been made to the pending rule.
Italicized text that is underscored is new text that is being added.
Italicized text that is ~~underscored and struck through~~ is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending rule text.

Only those sections or subsections that have changed from the original temporary/proposed text are printed in this Bulletin following this notice.

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, [Volume 09-6, June 3, 2009, pages 58 through 100.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE
AMENDED PENDING RULE TEXT FOR DOCKET 18-0154-0901

Subsection 010.13

00410. DEFINITIONS.

For the purposes of ~~HDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act,"~~ this rule, the following terms will be used as defined below: ~~(4-5-00)(7-1-09)T~~

13. Pre-Standardized Medicare Supplement Benefit Plan. A group or individual policy of Medicare supplement insurance issued prior to July 1, 1992 on which the state made its revisions to conform to the Omnibus Budget Reconciliation Act of 1990. ~~(7-1-09)T(7-1-09)T~~

Subsection 024.02.h.ii.

024. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010.

02. Make-up of 2010 Standardized Benefit Plans. ~~(7-1-09)T~~

h. Standardized Medicare supplement Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following: ~~(7-1-09)T~~

ii. Part A Hospital Coinsurance ~~ninetieth~~ *ninety-first* through one hundred fiftieth day: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ~~ninetieth~~ *ninety-first* through the one hundred fiftieth day in any Medicare benefit period;
~~(7-1-09)T~~(7-1-09)T

Section 039 (Section name only)

039. PROHIBITION AGAINST USE OF GENETIC INFORMATION AND REQUESTS FOR GENETIC TESTING. THIS SECTION APPLIES TO ALL POLICIES WITH POLICY YEARS BEGINNING ON OR AFTER MAY 21, 2009.

This section applies to all policies with policy years beginning on or after May 21, 2009.

(7-1-09)T

IDAPA 20 - DEPARTMENT OF LANDS

20.01.01 - RULES OF PRACTICE AND PROCEDURE BEFORE THE STATE BOARD OF LAND COMMISSIONERS

DOCKET NO. 20-0101-0901

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 by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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

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

The rule change corrects outdated physical location information and provides current telephone, facsimile, mailing, and website information. The rule change is necessary to provide accurate information to the public. This information will enable the public to access meetings of the State Board of Land Commissioners as well as conduct business with the Idaho Department of Lands. This current office information will be reflected in other chapters of the rules of the Department of Lands.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal 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 nature of this rulemaking.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. IDL will consider all written comments received by the undersigned on or before August 26, 2009.

DATED this 23rd day of June, 2009.

George Bacon, Director
Department of Lands
300 North 6th Street, Suite 103
P. O. Box 83720
Boise, ID 83720-0050
Phone: (208) 334-0242
Fax: (208) 334-3698

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 20-0101-0901

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. Department and Board Office. The ~~central~~ office of the Board and the Department of Lands is the Director's Office of the Department of Lands, ~~1215 W. State~~ 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-700050, ~~switchboard~~ telephone number (208) 334-0200, and fax number (208) 334-2339. The Board's website is <http://www.idl.idaho.gov/>. Office hours are from 8 a.m. to 5 p.m., Monday through Friday. Subsection 007.02 lists another ~~The~~ Department of Lands ~~has several other statewide offices~~ facility from which information on various Board matters may be obtained, or where comments on rulemaking may be filed in some instances; ~~these offices are located as follows:~~ (7-1-93)(____)

02. Coeur d'Alene Headquarters. ~~P.O. Box 670, 701 River~~ 3780 Industrial Avenue South, Coeur d'Alene, Idaho ~~83616-0670~~ 83815, telephone number (208) ~~664-2174~~ 769-1525, fax number (208) ~~664-3840~~ 769-1524. (7-1-93)(____)

02. Coeur d'Alene Headquarters, Navigable Waters, 1910 NW Boulevard, Suite 201, Coeur d'Alene, Idaho 83814-2615, Telephone number (208) 765-5235, Fax number (208) 765-5308. (7-1-93)

03. Priest Lake Area Office, Cavanaugh Bay #132, Coolin, Idaho 83821, Telephone number 443-2516. (7-1-93)

04. Pend Oreille Lake Area Office, P.O. Box 909, Hwy 200 at Westwood, Sandpoint, Idaho 83864, Telephone number (208) 263-5104, Fax number (208) 263-0724. (7-1-93)

05. St. Joe Area Office, 1806 Main Avenue, St. Maries, Idaho 83861, Telephone number (208) 245-4551, Fax number (208) 245-4867. (7-1-93)

06. Clearwater Area Office, 10230 Highway 12, Orofino, Idaho 83544, Telephone number (208) 476-4587, Fax number (208) 476-7175. (7-1-93)

07. Payette Lakes Area Office, P.O. Box AS, McCall, Idaho 83638, Telephone number (208) 634-7125, Fax number (208) 634-4320. (7-1-93)

08. Southwest Idaho Area Office, 8355 W. State Street, Boise, Idaho 83703, Telephone number (208) 334-3488, Fax number (208) 853-6372. (7-1-93)

09. South Central Idaho Area Office, P.O. Box 149, 329 Washington Street, Gooding, Idaho 83330, Telephone number (208) 934-5606. (7-1-93)

10. Eastern Idaho Area Office, 3563 Ririe Highway, Idaho Falls, Idaho 83401, Telephone number (208) 523-5398, Fax number (208) 528-2834. (7-1-93)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.14 - GRAZING LEASES AND CROPLAND LEASES

DOCKET NO. 20-0314-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 59-104(6), Idaho Code.

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

WEDNESDAY, AUGUST 19, 2009	THURSDAY, AUGUST 20, 2009
9:00 am to 11:00 am MDT Nampa Civic Center Central Banquet Room 311 Third Street South Nampa, Idaho	10:00 am to Noon MDT Idaho Dept. of Fish & Game 1345 Barton Rd. Pocatello, Idaho
1:00 pm to 3:00 pm MDT Idaho Dept. of Fish & Game 324 South 417 East, Suite 1 Jerome, Idaho	1:00 pm to 3:00 pm MDT Idaho Dept. of Fish & Game 99 Hwy. 93 North Salmon, Idaho
2:00 pm to 4:00 pm Pacific Time (NOTE: 3:00 pm to 5:00 pm MDT) Idaho Dept. of Fish & Game 3316 16th Street Lewiston, Idaho	3:00 pm to 5:00 pm MDT Idaho Dept. of Fish & Game 4279 Commerce Circle Idaho Falls, Idaho

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

DESCRIPTIVE SUMMARY: The following is 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 revisions provide for (1) acceptance of lease applications for competing uses; (2) development of lease terms by the Department and the applicant based on pre-identified criteria; (3) minimum bids at conflict auctions; (4) penalties for applicant withdrawal prior to or after a conflict auction; and (5) new improvement crediting procedures for improvements approved after July 1, 2009.

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

The procedures for lease applications and conflict auctions provided for in the current rules have resulted in administrative inefficiencies, uncertainty, and litigation for the Land Board, the Department, and lease applicants. The procedural changes provided by this temporary rule are necessary to establish transparency, fairness, and consistency to the lease application and conflict auction processes—which confers a benefit on all affected groups and citizens. These changes will reduce personnel and operating costs thereby improving the financial performance of the Endowment Land Grazing Program consistent with the Land Board's and Departments constitutional mandate to maximize financial returns to endowment beneficiaries. The Department further anticipates that the new procedures will benefit the general welfare by increasing competition for state endowment land leases, thereby increasing financial return to endowment beneficiaries.

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(2), Idaho Code, negotiated rulemaking was not conducted because this is a temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bob Brammer, Division Administrator (208) 334-0239.

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 August 26, 2009.

DATED this 6th day of July, 2009.

Bob Brammer
Division Administrator
Idaho Department of Lands
300 North 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0500
Phone: (208) 334-0239
Fax: (208) 334-3698

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 20-0314-0901

IDAPA 20
TITLE 03
CHAPTER 14

**20.03.14 - RULES GOVERNING GRAZING ~~LEASES AND CROPLAND~~, FARMING, CONSERVATION,
NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES**

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 58-104, Idaho Code. (3-13-02)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.14, "Rules Governing Grazing ~~Leases and Cropland~~, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases."

(~~3-13-02~~)(7-1-09)T

02. **Scope.** These rules constitute the Idaho Department of Lands' administrative procedures for leasing of state endowment trust land ~~that is classified as for grazing land or cropland, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a ten (10) year lease term restriction, and under the provisions of Section 58-310, Idaho Code regarding lease auctions.~~ These rules shall be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill.

(3-13-02)(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

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

Idaho Department of Lands, 300 North 6 Sixth Street, Suite 103, Boise, Idaho 83720; office hours are 8 a.m. to 5 p.m. ~~Monday through Friday, except legal holidays (MST);~~ mailing address is Idaho Department of Lands, PO Box 83720, Boise, Idaho 83720-0050.

(3-13-02)(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

007. STATEMENT OF PURPOSE.

~~These rules apply to the lease of state lands for grazing of domestic livestock and for cropping purposes. The leasing of state lands designated by the Department as grazing and/or cropping lands, for purposes other than grazing and/or cropping, are governed by Section 030 of these rules.~~

(3-13-02)

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. **Amortization.** The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee's annual lease payments. (3-13-02)

02. **Animal Unit Month (AUM).** ~~The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one half (1 1/2) AUM.~~

(3-13-02)

03. **Appraisal.** ~~The act or process of estimating the value of Department authorized improvements associated with a lease.~~

(3-13-02)

042. **Assignment.** The Department approved transfer of all, or a portion of, a lessee's right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

053. **Board.** The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

064. **Conflict Application.** ~~An timely application to lease state endowment trust land for grazing or cropland purposes and that is submitted by someone other than the current/former lessee, or, in the case of unleased land, a situation, farming, conservation, noncommercial recreation or communication site use when more than one (1) or more applications ~~is~~ have been submitted for the same parcel and use of the state endowment trust land and for the same or an incompatible use.~~

(3-13-02)(7-1-09)T

075. **Department.** The Idaho Department of Lands. (6-14-88)

- ~~086.~~ **Director.** The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)
- ~~097.~~ **Extension.** An approved delay in the due date of the rental owed on a ~~cropland~~ farming lease without risk of loss of the lease. (3-13-02)(7-1-09)T
- ~~10.~~ **Grazing.** ~~The consumption of forage by domestic livestock.~~ (3-13-02)
- ~~08.~~ **Improvement Valuation.** The Land Board approved process or processes of estimating the value of Department authorized improvements associated with a lease. (7-1-09)T
- ~~109.~~ **Grazing Management Plan Lease.** A written agreement between the lessee and the Department, or between the lessee and another public agency and approved by the Department, designed to meet the resource objectives identified by the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-13-02)(7-1-09)T
- ~~12.~~ **Herd Stock.** ~~Livestock leased or managed, but not owned, by the lessee.~~ (3-13-02)
- ~~130.~~ **Lease Application.** An application to lease state endowment trust land for ~~grazing or cropping,~~ farming, conservation, noncommercial recreation, or communication site purposes. (3-13-02)(7-1-09)T
- ~~141.~~ **Manageable Unit.** A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to ~~efficiently graze livestock or raise crops~~ achieve the proposed use. (3-13-02)(7-1-09)T
- ~~152.~~ **Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state ~~grazing or cropland~~ lease. (3-13-02)(7-1-09)T
- ~~163.~~ **Person.** An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)
- ~~174.~~ **Sublease.** An agreement in which the state lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATIONS AND PROCESSING.

- ~~01.~~ **Eligible Applicant.** Any person legally competent to contract may submit an application to lease state ~~owned~~ endowment trust land provided ~~he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho or such person is not delinquent on any payments to the state of Idaho. To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such.~~ (3-13-02)(7-1-09)T
- ~~02.~~ **Application Process.** All lease applications for a state cropland or grazing lease must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: (3-13-02)(7-1-09)T
- a.** Non-refundable Fee. Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. Applications will be accepted for unleased land when there is no disruption of other designated uses or the Department's long-term management objectives. (3-13-02)(7-1-09)T

c. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, within thirty (30) days after mailing such notice, the application shall be considered invalid. (3-13-02)(7-1-09)T

d. Management Proposal. All applicants for state grazing leases must submit a grazing management proposal, which addresses Department-identified resource concerns, within thirty (30) days of the deadline to apply for the lease Nonconflicted Applications. (3-13-02)(7-1-09)T

i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. (7-1-09)T

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a proposed lease specific to the applicant's proposed use. (7-1-09)T

e. Conflicted Applications. (7-1-09)T

i. All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed use. (7-1-09)T

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (7-1-09)T

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust parcel with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (7-1-09)T

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (7-1-09)T

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (7-1-09)T

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (7-1-09)T

(5) Mitigation measures designed to address trust management concerns such as: (7-1-09)T

(A) Construction of improvements at lessee's expense. (7-1-09)T

(B) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (7-1-09)T

(C) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. (7-1-09)T

(D) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (7-1-09)T

(6) Any other factors the Department deems relevant to the management of the state endowment trust parcel for the proposed use. (7-1-09)T

f. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. No auction shall be held until the Land Board resolves any such appeal. (7-1-09)T

~~03. Applications for Lands Included in a Cancelled Land Sale Certificate. The prior land sale certificate holder will be given the first option to obtain a lease for those lands covered by the cancelled land sale certificate. If the previous certificate holder is indebted to the state of Idaho, the debt must be satisfied before the certificate holder is eligible to lease the land. If the previous certificate holder declines the opportunity to lease the land, the Department may solicit other applications. The initial lease offered on lands covered under a cancelled land sale certificate must be limited to two (2) years to coincide with the contract reinstatement period. (3-13-02)~~

~~043. Renewals Expiring Leases. Lease renewal applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed renewal applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-13-02)(7-1-09)T~~

~~054. Rental Deposit. (3-13-02)~~

~~a. Existing Lessee. An existing lessee is the current lessee of the expiring lease. If the existing lessee is the sole applicant, the existing lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease, and the existing lessee places is awarded the highest bid at auction, lease by the existing Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease by the conclusion of the auction at the time the lease is submitted to the Department with lessee's signature. (3-13-02)(7-1-09)T~~

~~b. New Applicants. (7-1-09)T~~

~~i. A new applicant is one who submits an application, but does not hold the current lease. All applicants for unleased land are deemed new applicants. Expiring Lease. New applicants for expiring leases must submit, with the Department, the estimated first year's rental to the Department at the time of the application's submission. (7-1-09)T~~

~~ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. When more than one (1) application is received for unleased state endowment trust land, the all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction. (3-13-02)(7-1-09)T~~

~~021. RIGHTS RESERVED TO THE DEPARTMENT.
The Department expressly reserves the right: (3-13-02)~~

~~01. Reservations. To all mining rights, timber rights, water rights, easements and rights of way, and the fee title to the leased land. (3-13-02)~~

~~02. **Other Leases.** To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the lessee from such activities. (3-13-02)~~

~~03. **Grazing Restrictions.** To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found. (3-13-02)~~

~~04. **Seed Harvest.** To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use. (3-13-02)~~

~~05. **Entry.** To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest. (3-13-02)~~

~~06. **Easements.** To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use. (3-13-02)~~

~~07. **Public Access.** To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state-owned lands. Use of state lands shall not be restricted without prior written approval of the Department. (3-13-02)~~

~~08. **Water Rights.** To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho. (3-13-02)~~

~~09. **Road Closures.** To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease. (3-13-02)~~

~~10. **Special Leases.** To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use. (6-14-88)~~

~~11. **Permanent Improvements.** To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted. (3-13-02)~~

0221. LENGTH OF LEASE.

The Department may issue a lease for any period of time up to ~~that~~ the maximum term provided by law. (3-13-02)(7-1-09)T

0232. - 029. (RESERVED).

030. RECLASSIFICATION OF CHANGE IN LAND USE.

The Director may ~~reclassify~~ change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. (3-13-02)(7-1-09)T

01. Termination of Existing Lease. In case of ~~reclassification~~ a change in land use to a use other than provided for under these rules, the existing lease may be terminated, in whole or in part, upon one hundred eighty (180) days written notice to the lessee. If a lease is terminated due to ~~reclassification~~ a change in land use, improvement credit will be addressed in accordance with these rules. ~~(3-13-02)(7-1-09)T~~

~~**02. Petition.** Any party may petition the Department to change the designated primary use of the endowment land. The petition shall detail the reasons such a change would be in the best long-term interest of the endowed institution and shall include an accurate legal description of the petitioned lands. The Department will consider such petition, along with supplementary information the Department deems appropriate, and revise the designation, if it believes such redesignation is in the best interest of the beneficiary institution. During the period a petition for redesignation is under consideration, the designated uses of the endowment land will continue. (3-13-02)~~

031. -- 039. (RESERVED).

040. RENTAL.

01. Rental Rates. Rental rates shall be determined by the Board. ~~The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production.~~ ~~(3-13-02)(7-1-09)T~~

02. Special Uses. Fees for special uses requested by the lessee and approved by the Department; ~~including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land~~ in writing as consistent with the primary use granted by the lease, shall be determined by the Department. ~~(3-13-02)(7-1-09)T~~

03. Rental Due Date. ~~Cropland~~ Lease rentals are due ~~on or before January 1 and grazing lease rentals are due on or before May 1~~ in accordance with the terms of the lease. ~~(3-13-02)(7-1-09)T~~

(BREAK IN CONTINUITY OF SECTIONS)

042. LATE PAYMENTS.

Rental not paid by the due date shall be considered late. Late payment charges from the due date forward shall be ~~added to the rental amount. Late payment charges shall be determined by the Board~~ specified in the lease. ~~(3-13-02)(7-1-09)T~~

043. -- 048. (RESERVED).

049. BREACH.

01. Non-Compliance. A lessee is in breach if the lessee's use is not in compliance with the provisions of the lease. ~~This includes, but is not limited to, unauthorized variance in the season of use, in the numbers or class of livestock, in pasture rotation, in improvement construction/maintenance, or in agricultural use.~~ ~~(3-13-02)(7-1-09)T~~

02. Damages for Breach. A lessee is responsible for all damages resulting from breach and other damages as provided by law. (3-13-02)

050. LEASE CANCELLATION.

Leases may be cancelled by the Director for the following reasons: (3-13-02)

~~**01. Non-Payment of Rental.** If the rental is not paid by the due date, the Department shall notify the lessee in writing of the non-payment. Leases not paid within thirty (30) days of the due date may be cancelled without further notice. (3-13-02)~~

021. Non-Compliance with Lease Provisions. If the lessee is not complying with the lease provisions

or ~~management plan provisions or~~ if resource damage attributable to the lessee's management is occurring to state endowment trust land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. ~~(3-13-02)(7-1-09)T~~

032. Reclassification Change in Land Use. A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are ~~reclassified to be leased~~ for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to ~~reclassification~~ a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ~~(3-13-02)(7-1-09)T~~

043. Land Sale. The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ~~(3-13-02)(7-1-09)T~~

054. Mutual Agreement. Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

051. LEASE REINSTATEMENT.

01. After Cancellation for Non-Payment. A lease may be reinstated within thirty (30) days after cancellation for non-payment when the rental, late payment charges, and a reinstatement fee have been paid. If not reinstated within the time specified the delinquent lessee must file a new lease application to lease the state endowment trust land or the lease may be offered to other parties. ~~(3-13-02)(7-1-09)T~~

02. After Cancellation for Other Causes. Leases cancelled for violation of lease terms or for resource damage may be reinstated by the Department provided the former lessee submits a written request for reinstatement and identifies commits to implement management actions that will address the resource management concerns and mitigate damages that may have occurred, as determined by the Department. ~~(3-13-02)(7-1-09)T~~

~~**03. Reinstatement. Leases cancelled for non-payment may be reinstated within one (1) year of cancellation if the lands are still unleased and the lessee pays reinstatement fees, plus back rental and interest.**~~
~~(3-13-02)~~

(BREAK IN CONTINUITY OF SECTIONS)

053. EXTENSIONS OF ANNUAL ~~CROPLAND~~ FARMING LEASE PAYMENT.

01. Cropland Farming Lease Extensions. An extension of the annual lease payment may be approved for ~~cropland farming~~ leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. ~~(3-13-02)(7-1-09)T~~

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. If the subject state endowment trust land is covered under a Conservation Reserve Program contract with the federal government, the lessee must sign a transfer of payment, or a similar form provided by the federal government, transferring the federal payment to the Department if the rental payment is not received by the newly established deadline. ~~(3-13-02)(7-1-09)T~~

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. (3-13-02)

~~054. CROPLAND LEASE HARDSHIP CLAIMS.~~

~~01. Crop Loss. Adjustments in rental may be made because of unusual crop loss that occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee. (3-13-02)~~

~~02. Conditions to Meet. To qualify for a hardship claim the following conditions must be met: (3-13-02)~~

~~a. All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred. (3-13-02)~~

~~b. Claims will be considered for the current growing season only. (6-14-88)~~

~~c. Any adjustments will be credited to next year's rental. (3-13-02)~~

~~d. Claims will only be approved for losses beyond the control of the lessee. (3-13-02)~~

~~e. The lessee will only receive a reduction in rental for yield losses that occur beyond the normal variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records. (3-13-02)~~

~~f. Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty five percent (35%) of the average crop yield. (3-13-02)~~

~~g. Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance. (6-14-88)~~

054. -- 059. (RESERVED).

060. FEES.

~~Miscellaneous f~~ Fees for lease administration will be periodically set by the Board and must be paid in full before a transaction can occur. All lease administration fees are non refundable. The Board shall have the authority to set fees ~~in~~ related to administration of the leasing process including, but not limited to the following areas: (3-13-02)(7-1-09)T

01. Lease Applications. (3-13-02)

02. Full Lease Assignment. (3-13-02)

03. Partial Lease Assignment. (3-13-02)

04. Mortgage Agreement. (3-13-02)

05. Subleases. (3-13-02)

06. Late Rental Payment. (3-13-02)

07. Lease Reinstatement. (3-13-02)

08. Minimum Lease Fee. (3-13-02)

09. Lease Payment Extension Request. (3-13-02)

~~10. Request For Reclassification Of Land Use. (3-13-02)~~

061. -- 069. (RESERVED).

070. SUBLEASING.

A lessee shall not authorize another person to ~~farm or graze livestock on~~ use state endowment trust land without prior written approval from the Department. The lessee must provide the name and address of sublessee, purpose of sublease, and a copy of the proposed sublease agreement. ~~The sublease must be consistent with the Department resource objectives for the land and will only be approved on an annual basis.~~ Lessee controlled ~~Her~~ stock does not require sublease approval. (3-13-02)(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

072. MORTGAGE AGREEMENTS.

The lessee shall not enter into a mortgage agreement that involves a state ~~grazing or cropland~~ endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement shall not exceed the lease term. (3-13-02)(7-1-09)T

073. -- 0789. (RESERVED).

~~080. GRAZING MANAGEMENT PLANS.~~

~~Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan. (3-13-02)~~

~~01. Federal Plan. When state land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, to satisfy the requirements of a management plan. (3-13-02)~~

~~02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time. (3-13-02)~~

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

090. TRESPASS.

01. Loss or Waste. The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. (3-13-02)(7-1-09)T

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. (3-13-02)(7-1-09)T

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

091. -- 099. (RESERVED).

100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.

01. Prior Written Approval. The lessee must secure the written approval of the Department prior to

constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval shall eliminate any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be ~~expressly stated~~ identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. (3-13-02)(7-1-09)T

02. Maintenance. All authorized improvements shall be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on state endowment trust lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department shall provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. Any improvement credit also may be reduced to account for lessee failure to maintain the improvement. (3-13-02)(7-1-09)T

03. Bond. ~~If there is a risk of damage to state lands,~~ The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. (3-13-02)(7-1-09)T

101. IMPROVEMENT CREDIT.

01. Sale ~~Or~~ Auction. In the event of sale of the state endowment trust lands covered under the lease or if the existing lessee is not the successful bidder at the auction of the lease, the ~~appraised and~~ creditable value of the authorized improvements, as determined by the Department, shall be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. (3-13-02)(7-1-09)T

02. Exchange. ~~If the existing lessee has creditable improvements on the land being considered for exchange, the acquiring party, if other than the existing lessee, will be required to enter into agreement with the existing lessee to equitably recognize the value of the improvements.~~ In the event of exchange of the state endowment trust land covered under the lease, the creditable value of authorized improvements, as determined by the Department, shall be paid to the former lessee by the acquiring party, if other than the existing lessee. (3-13-02)(7-1-09)T

03. Crediting. Improvement credit may be allowed ~~if the improvement would be of value to anyone who might lease or purchase the land in the future and use it for the purpose for which the land is classified at the time~~ when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries if the improvements are: placed on the land and the Department wants the improvement to remain for management purpose. (3-13-02)(7-1-09)T

a. Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; (7-1-09)T

b. Not expressly permitted "for lessee's benefit only"; and (7-1-09)T

c. Maintained during the lease term. (7-1-09)T

04. Value Only to Lessee. Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation shall be made in the permit, "For lessee's benefit only." If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. (3-13-02)

05. Maintenance Costs. Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. (3-13-02)

06. Unauthorized Improvements. No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. (3-13-02)

07. Cost Sharing. Federal or state cost-share amounts shall not be included in the allowable improvement credit. (3-13-02)

102. VALUATION OF IMPROVEMENTS.

01. Existing Improvements. Creditable improvements existing as of July 1, 2009, will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility unless otherwise specified in the lease or improvement permit. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. ~~(3-19-07)~~(7-1-09)T

02. New Improvements. Creditable improvements authorized after July 1, 2009 will be subject to an initial value determined by the Department using NRCS improvement cost worksheets or the lessee's actual costs, whichever is less. Such initial value shall be the maximum recognized improvement credit value for any future determinations, provided that the improvements are maintained throughout the term of the lease. (7-1-09)T

03. Applicant Review of Department Improvement Credit Valuation. All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. (3-19-07)

04. Failure to File a Timely Notice of Objection. Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. (3-19-07)

05. Notice of Objection. Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (3-19-07)

06. Selection of an Independent Third Party. The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. (3-19-07)

07. Duties of the Independent Third Party. The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. (3-19-07)

08. Notification of Final Improvement Value. Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice which shall reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. (3-19-07)

103. -- 104. (RESERVED).

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land that is currently classified for grazing or cropland use, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-13-02)(7-1-09)T

02. Applicant Notification. At least fourteen (14) days prior to the date of such auction, the Department shall give notice by letter, which notice shall be sent in the course of certified mail to each of the applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address as it is given in the application. (3-13-02)

03. Minimum Bid. Bidding shall begin at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. (7-1-09)T

034. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease shall be deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. (3-13-02)

04. Appearance. ~~Failure to appear at a scheduled lease auction or to notify the Department of an intent to withdraw from an auction at least three (3) working days prior to a scheduled auction will result in forfeiture of funds deposited, absent extraordinary circumstances. Any applicant not present or represented to bid at the time and place specified shall lose all rights or interest in leasing the parcel.~~ (3-13-02)

05. Withdrawal Prior to Auction. Applicants who withdraw their applications prior to the auction or fail to participate at the auction forfeit an amount equal to the lesser of the following: (7-1-09)T

a. The Department's cost of making any required improvement credit valuation; (7-1-09)T

b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (7-1-09)T

c. For conflict applicants, the rental deposit made. (7-1-09)T

06. High Bid Deposit. The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. (7-1-09)T

057. Auction Procedures. The Department shall ~~establish~~ prescribe the procedures for conducting ~~grazing and cropland conflicted~~ lease auctions. (3-13-02)(7-1-09)T

08. Withdrawal After Auction. (7-1-09)T

a. If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (7-1-09)T

i. If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (7-1-09)T

ii. If the auction involved more than two (2) participants, the lease will be reauctioned. (7-1-09)T

b. If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. (7-1-09)T

106. BOARD REVIEW OF AUCTION.

The Board may will review all bids submitted at a lease auction and shall have the power to reject any and all bids made at such auctions when, in their judgement: the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article IX, Section 8 of the Idaho Constitution and all relevant statutory provisions. (3-13-02)(7-1-09)T

- ~~01. **Fraud or Collusion.** There has been fraud or collusion. (3-13-02)~~
~~02. **Other Reasons.** There are other reasons that justify the rejection of said bids. (3-13-02)~~

107. -- 110. (RESERVED).

111. NOXIOUS WEED CONTROL.

01. Weed Control. The lessee shall cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code, ~~except those resulting from activities beyond the lessee's control.~~ (3-13-02)(7-1-09)T

02. Responsibility. The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Costs for control of noxious weeds on the leased state grazing endowment trust lands shall be shared by the responsibility of the lessee and Department, with the Department's share subject to funds appropriated for that purpose unless otherwise provided for in the lease. (3-13-02)(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

114. LIABILITY (INDEMNITY).

The lessee shall indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased ~~premises parcel~~, or the occupation of the leased premises parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (3-13-02)(7-1-09)T

115. RULES AND LAWS OF THE STATE.

The lessee shall comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. (3-13-02)(7-1-09)T

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.03 - RULES GOVERNING VETERANS SUPPORT FUND GRANT PROGRAM

DOCKET NO. 21-0103-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 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 Section 65-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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 Veterans Support Fund began receiving funds with the filing of 2008 Idaho tax returns. The rules are needed to support grants from the Veterans Support Fund monies. The rules establish a new chapter setting forth the programs and projects eligible for grants and the grant process.

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

The rule revisions confer a benefit to grant recipients.

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:

The Veterans Support Fund established by Section 65-209, Idaho Code, began receiving funds through a check box on Idaho tax returns for 2008. The 2009 Idaho Legislature approved the addition of monies to the fund provided by the Gold Star license plate. These rules establish the framework for the expenditure of the funds in such fund through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund.

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 Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 3rd day of July 2009.

David E. Brasuell
Administrator
Division of Veterans Services
320 Collins Road
Boise, ID 83702
Phone: (208) 334-351
Fax (208) 334-2627

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 21-0103-0901

IDAPA 21
TITLE 01
CHAPTER 03

21.01.03 - RULES GOVERNING VETERANS SUPPORT FUND GRANT PROGRAM

000. LEGAL AUTHORITY.

Section 65-204, Idaho Code, authorizes the Administrator of the Division of Veterans Services to promulgate rules with respect to all matters of administration under Title 65, Chapter 2, Idaho Code, including the disbursement of funds held under Section 65-209, Idaho Code. (6-1-09)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 21.01.03, "Rules Governing Veterans Support Fund Grant Program." (6-1-09)T

02. Scope. These rules establish a grant application and award process, set forth the programs and projects eligible for grants, and provide for the disbursement of funds. (6-1-09)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (6-1-09)T

003. ADMINISTRATIVE APPEALS.

The award of grants under the Program is a discretionary action to be performed by the Administrator. There is no provision for administrative appeal under these rules. (6-1-09)T

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. (6-1-09)T

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

The principal place of business of the Office of the Idaho Division of Veterans Services is in Boise, Idaho. The office is located at 320 Collins Road, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is 320 Collins Road, Boise, Idaho 83702. The telephone number of the office is (208)334-3513. The facsimile number of the office is (208)334-2627. (6-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (6-1-09)T

007. -- 010. (RESERVED).

011. DEFINITIONS.

01. Administrator. The administrator of the Division. (6-1-09)T

02. Applicant. An individual or organization who has submitted a written request for grant funds. (6-1-09)T

03. Division. The Division of Veterans Services in the Idaho Department of Self Governing Agencies. (6-1-09)T

04. Program. The Veterans Support Fund Grant Program established by Section 65-209, Idaho Code, and these rules. (6-1-09)T

012. POLICY AND OBJECTIVE.

The objective of the Program is to fund programs to support veterans of the armed forces of the United States. The policy of the Division is to fund programs operated both within and outside state and local government. Veterans Support Fund grants are not provided to support the basic needs of individual veterans or their families. The Division will refer applicants for grants to support the needs of individuals to the Veterans Services Emergency Relief Program. (6-1-09)T

013. ELIGIBLE APPLICANTS.

Individuals, organizations, and governmental entities, including bureaus of the Division, may submit applications for funding from the Program. (6-1-09)T

014. GRANT PURPOSES AND PRIORITIES.

01. Eligible Activities and Costs. Any purpose meeting the objective of supporting veterans of the armed forces of the United States and not excluded in Subsection 013.02 of these rules is eligible to receive a grant under the Program. Eligible activities and costs include: (6-1-09)T

a. Programs to inform veterans and the public of services and programs for veterans, including programs offered by the Division. (6-1-09)T

b. Programs providing career training to veterans, including programs providing educational scholarships. (6-1-09)T

c. Programs providing training to individuals and organizations supporting veterans, including employees of public and private organizations assisting veterans with healthcare, education, and assistance in obtaining public benefits. (6-1-09)T

d. The acquisition of equipment supporting the health, rehabilitation, or recreational activities of veterans. (6-1-09)T

e. Financial support or sponsorship of ceremonies celebrating or honoring the service of veterans. (6-1-09)T

f. Programs providing social, health, rehabilitation, or recreational activities or care to veterans. (6-1-09)T

02. Ineligible Activities and Costs. Grant funds shall not be used for political, lobbying, religious, or illegal activities. Ineligible lobbying activities do not include: (6-1-09)T

- a. Advocacy on behalf of individual Applicants for public benefits. (6-1-09)T
- b. The provision of educational information to public officials concerning the needs of veterans that does not advocate for or support specific legislative proposals. (6-1-09)T
- 03. Funding Priorities.** The Administrator will give priority to: (6-1-09)T
 - a. Applicants with grant proposals that will serve the greatest number of veterans; and (6-1-09)T
 - b. Applicants with grant proposals for which there is no other source of funding. (6-1-09)T

015. -- 019. (RESERVED).

020. APPLICATION, REVIEW, AND AWARD.

01. Application. Applications for Program grants may be submitted at any time. Applicants shall submit a grant proposal in the format required by the Administrator. Copies of the application format requirements and the list of supporting information may be obtained by contacting the Administrator at the address set forth in Section 005 these rules. (6-1-09)T

02. Review of Grant Proposals. Division staff review proposals for completeness and compliance with these rules and make recommendations for funding to the Administrator. The Administrator may establish review committees consisting of Division staff, representatives of veterans organizations, members of the Veterans Affairs Commission, or other individuals. (6-1-09)T

03. Grant Awards. The Administrator, in his sole discretion, makes all Program grant awards. The Administrator may establish conditions or requirements for the expenditure of grant funds in a written agreement between the Division and the grant recipient. Conditions and requirements may include: (6-1-09)T

- a. The provision of matching funds from the grant recipient. (6-1-09)T
- b. The repayment of all or a portion of the grant funds upon specified events. (6-1-09)T
- c. The issuance of grant funds on a cost reimbursement basis. (6-1-09)T
- d. The submission of status and final reports. (6-1-09)T
- e. A completion date for the project or program. (6-1-09)T
- f. Bidding requirements for the expenditure of grant funds. (6-1-09)T
- g. Publication of credit to a grant from the Veterans Support Fund. (6-1-09)T
- h. A written accounting of the use of grant funds and copies of all receipts associated with the expenditure of grant funds. (6-1-09)T

04. Grant Modification. The Administrator and the recipient may modify the grant award by written agreement. Modification, restructuring, or amendment to the grant shall be approved in the sole discretion of the Administrator. (6-1-09)T

021. COMPLIANCE WITH LAW AND CONFLICT OF INTEREST.

All grant recipients shall comply with applicable law in the conduct of programs supported by a Program grant. Public entities and employees receiving or administering grant funds shall comply with the ethics, personnel, bidding, and accounting requirements generally applicable to the entity or individual. Unless specifically provided in the grant, no official or officer of a grant recipient, individual grant recipient, or family member of an official or officer of a grant recipient or family member of an individual grant recipient shall personally profit financially from a Program

grant.

(6-1-09)T

022. TERMINATION OF FUNDING.

Grant funding may be terminated by the Administrator at any time for use of grant funds in violation of these rules, the terms of the grant, or violation of any applicable law. Upon receipt of a written notice of termination, the grantee shall immediately cease all expenditures of grant funds and return all unspent grant funds. The Administrator may require a written accounting of the use of grant funds upon the termination of funding and may deny payment for costs claimed by the grant recipient and not substantiated by written documentation.

(6-1-09)T

023. -- 999. (RESERVED).

IDAPA 22 - BOARD OF MEDICINE

22.01.01 - RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO

DOCKET NO. 22-0101-0901

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 54-1806 (2) (4) and (11), and 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, 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 August 19, 2009.

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

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

The proposed change's purpose is to assure the public health, safety and welfare in Idaho by providing the Board an opportunity to collaborate with other medical regulatory bodies. This proposed language provides the Board the authority to share information with other state boards to increase the capacity to restrict the ability of incompetent practitioners to move from state to state without disclosure or discovery of previous damaging or incompetent performance.

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, however, the Board received input and comments regarding sharing information, otherwise exempt from disclosure from other state medical boards and the Federation of State Medical Boards, Inc.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

Nancy M. Kerr, Executive Director
Idaho State Board of Medicine
1755 Westgate Drive, Ste. 140, Boise, ID
PO Box 83720, Boise, ID 83720-0058
Phone: (208) 327-7000
Fax: (208) 327-7005

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 20-0101-0901

004. PUBLIC RECORD ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. Pursuant to Section 9-340C (9), Idaho Code, the Board of Medicine shall not disclose the filing of a complaint, the nature of a complaint, or the details of an investigation, except to disclose such information to appropriate authorities in cases where the Board of Medicine is cooperating with other state boards in investigation and enforcement concerning violations of the Idaho Medical Practice Act and these rules and comparable acts of other states. (~~5-3-03~~)()

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-0901 (FEE RULE - NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 30, 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 Section 57-728(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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:

Amendments to Section 57-728, Idaho Code, became effective April 17, 2009. The amendments require the Endowment Fund Investment Board (EFIB) to promulgate rules furthering the Credit Enhancement Program for School Districts. The rules will allow the reopening of the Program, which was closed to new applications in 2008. The new chapter of rules specifies the application procedure for school districts seeking to participate in the Credit Enhancement Program.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 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 rulemaking is necessary to comply with deadlines in amendments to governing law. In addition, the temporary rules confer a benefit by allowing the Program to re-open.

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:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in *Endowment Fund Investment Board v. Crane* that the Program is a permissible investment for the Fund.

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

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

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 Larry Johnson, Manager of Investments, (208) 334-3312.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

Larry Johnson
Manager of Investments
Endowment Fund Investment Board
816 W. Bannock St., Ste. 301
P. O. Box 83720
Boise, ID 83720-0046
Phone: (208) 334-3312
Fax: (208) 334-3786

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 32-0101-0901

IDAPA 32
TITLE 01
CHAPTER 01

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

000. LEGAL AUTHORITY.

Section 57-728(2), Idaho Code, gives the Endowment Fund Investment Board authority to promulgate rules necessary to the discharge of the EFIB's duties for the administration of the Credit Enhancement Program.

(4-30-09)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 32, Title 01, "Rules Governing the Credit Enhancement Program for School Districts."

(4-30-09)T

02. Scope. These rules contain the provisions for implementation of the Credit Enhancement Program.

(4-30-09)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are

available for public inspection and copying at the EFIB's office. (4-30-09)T

003. ADMINISTRATIVE APPEALS.

The EFIB's determination to invest through the Credit Enhancement Program is a discretionary exercise of its fiduciary duties to the endowment funds. This chapter does not provide for appeal of the requirements under the Credit Enhancement Program as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code.

(4-30-09)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules.

(4-30-09)T

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

The location and mailing address of the EFIB is 816 West Bannock Street, Suite 301, Boise, Idaho 83702. The offices are open daily from 8 a.m. to noon, and 1 p.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The EFIB's telephone number is (208) 334-3311 and the facsimile number is (208) 334-3786.

(4-30-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code.

(4-30-09)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Credit Enhancement Program. The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (4-30-09)T

02. EFIB. Endowment Fund Investment Board. (4-30-09)T

03. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. (4-30-09)T

04. School District. Shall have the meaning provided in Section 33-5302, Idaho Code. (4-30-09)T

05. Total Debt Service. The total amount to be repaid to purchasers over the stated maturity of the School District bond (principal plus interest). (4-30-09)T

06. Treasurer. The Idaho State Treasurer. (4-30-09)T

011. -- 019. (RESERVED).

020. APPLICATION.

01. Required Materials. School Districts shall submit the following application materials to the EFIB: (4-30-09)T

a. Correspondence from the Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 3-57-728(8), Idaho Code. (4-30-09)T

b. A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. (4-30-09)T

c. Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years. If the audit of the last fiscal year has not been completed, an unaudited, draft financial statement or financial summary for that year will be accepted up to six (6) months after the end of the last fiscal year. (4-30-09)T

d. Upon request of the EFIB, documentation substantiating the information set forth in the financial statements submitted pursuant to Subsection 020.01 of these rules. (4-30-09)T

02. Application and Administrative Fees. School Districts shall submit an application fee of one hundred dollars (\$100) with the application materials. The EFIB may charge the applicant an administrative fee equal to the actual charges to the EFIB for the review of application materials by outside experts, including certified public accountants. (4-30-09)T

03. Staff Review. The EFIB may delegate review of applications to EFIB staff. The EFIB may delegate approval of applications to the EFIB's manager of investments. (4-30-09)T

04. Review Periods. The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests information substantiating audit materials, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating information. (4-30-09)T

021. -- 029. (RESERVED).

030. GUARANTY FEE. School Districts shall remit to the EFIB, within five (5) days of the sale of the bonds covered under the Credit Enhancement Program, a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. (4-30-09)T

031. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 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 Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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:

Motor Fuels Rule 130 is being amended to be consistent with the passage of House Bill 338 and to notify motor fuels distributors that deductions on the motor fuel distributor report for ethanol and biodiesel cannot be claimed on or after June 1, 2009.

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: In compliance with deadlines in amendments to governing law.

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 the amendments are simple in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Randy Nilson.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 35-0105-0901

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

- a.** The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b.** The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c.** The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)
 - i.** Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)
 - ii.** Exported; (4-11-06)
 - iii.** Delivered to the Idaho National Guard tax exempt; or (4-11-06)
 - iv.** Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)
- d.** The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e.** The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f.** The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h.** The tax-paid purchases; (7-1-98)
- i.** The net taxable gallons; (7-1-98)
- j.** The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009); ~~(4-2-08)~~(6-1-09)T

k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)

l. The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)

m. The tax computation; (7-1-98)

n. The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)

o. The gaseous fuels permit fees; and (4-11-06)

p. The net tax due. (4-11-06)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (5-8-09)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

06. Motor Fuels Receipts. All gasoline, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (5-8-09)

IDAPA 49 - IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

DOCKET NO. 49-0101-0801

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 49-0101-0801. This agency action for this final rulemaking is authorized pursuant to Section 54-3107, Idaho Code.

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

Pursuant to Senate Concurrent Resolution No. 107, Docket No. 49-0101-0801 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule:

Section 500, relating to disciplinary penalties, Subsection 500.01, relating to civil fines was rejected and declared null and void.

The original text of the proposed rule was published in the October 1, 2008 Idaho Administrative Bulletin, Vol. 08-10, page(s) 477 through 482. The pending rule was published in the December 3, 2008 Idaho Administrative Bulletin, Vol. 08-12, page 100.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Cherie Simpson at (208) 334-3233.

DATED this 16th day June, 2009.

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

THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY SCR 107

500. DISCIPLINARY PENALTY (RULE 500).

Costs and fees. The Board may order anyone licensed under Title 54, Chapter 31, Idaho Code, who is found by the Board to be in violation of the provisions of Title 54, Chapter 31, Idaho Code, to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee. (4-9-09)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
THE BOISE-MORES CREEK SUBBASIN ASSESSMENT AND TMDLS (HUC ID17050112)
DOCKET NO. 58-0000-0904
NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Boise-Mores Creek Total Maximum Daily Loads (TMDLs).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Boise-Mores Creek TMDLs. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Boise-Mores Creek TMDLs (Hydrologic Unit Code 17050112) addresses nine (9) assessment units (AUs)/pollutant combinations listed as impaired on Idaho's 2008 Section 303(d) list and seven (7) unlisted but impaired AUs/pollutant combinations. DEQ completed TMDLs for all AU/pollutant combinations deemed water quality impaired. DEQ has submitted this TMDL document to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/boise_mores_creek/boise_mores_creek.cfm or by contacting Ms. Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 29th day of June, 2009.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0903

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. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

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

TUESDAY - SEPTEMBER 8, 2009 - 3:30 p.m.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room B
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2009.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT STATEMENT: 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: Due to the nature of this rulemaking, negotiations were not held.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 8, 2009.

DATED this 30th day of June, 2009.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 58-0101-0903

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section

7429; (5-1-94)

h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a "serious" particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a "serious" carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate," one hundred (100) tpy or more, if the area is "serious," fifty (50) tpy or more, if the area is "severe," twenty-five (25) tpy or more, and if the area is "extreme," ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

11. Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2008~~9~~, are hereby incorporated by reference. (~~5-8-09~~)()

12. Permit Revision. Any permit modification, administrative amendment or reopening. (3-19-99)

13. Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

14. Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

15. Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

16. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

17. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally

recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Part 51 revised as of July 1, 2008~~9~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: ~~(5-8-09)~~()

i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

c. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

d. Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

e. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

f. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

g. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

h. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

i. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

j. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

k. Permits, 40 CFR Part 72, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~()

- l.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~(____)
- m.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~(____)
- n.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- o.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2008~~9~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(5-8-09)~~(____)
- p.** The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0901

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. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 19, 2009. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community. This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2009.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the conclusion of the 2010 legislative session if adopted by the Board and approved by the Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT STATEMENT: 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: Due to the nature of this rulemaking, negotiations were not held.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 2, 2009.

Dated this 30th day of June, 2009.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 58-0105-0901

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2008~~9~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(5-8-09)~~(_____)

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(5-8-09)~~(_____)

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be

defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency.

(5-8-09)()

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

e. Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department,

this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

f. Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation by Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), 262.60, and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States.

(~~5-8-09~~)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States"

shall be defined as the United States.

~~(5-8-09)~~(____)

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency.

~~(5-8-09)~~(____)

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency.

~~(5-8-09)~~(____)

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹.

~~(5-8-09)~~(____)

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV). In 40 CFR 268.48(a), the entry for “2,4,6-Tribromophenol” is excluded.

~~(5-8-09)~~(____)

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

~~(5-8-09)~~(____)

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008⁹, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively.

~~(5-8-09)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (~~5-8-09~~)()

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~5-8-09~~)()

017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. (~~5-8-09~~)()

018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.

40 CFR Part 267 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. (~~5-8-09~~)()

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0103-0901

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 59-1314(1) and 72-1405, 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 August 19, 2009.

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

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

Add a new rule (Rule 102) to provide for an additional employee contribution of .04% applicable to public safety officers, as defined in Section 59-1352A, Idaho Code. Section 59-1352A, Idaho Code provides for a \$100,000 disability benefit for public safety officers and provides that the benefit shall be funded by public safety officer contributions (not employer contributions). Renumber existing Rule 102 as Rule 103.

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 it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfoy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208- 334-3408

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 59-0103-0901

102. PUBLIC SAFETY OFFICER DISABILITY CONTRIBUTIONS UNDER SECTION 59-1352A, IDAHO CODE (RULE 102).

In accordance with Section 59-1352A, Idaho Code, public safety officers, as that term is used in Section 59-1352A, Idaho Code, shall pay an additional contribution rate of .04% of salary until next determined by the board. ()

1023. EMPLOYEE CONTRIBUTIONS BASED ON GROSS SALARY (RULE 1023).

Employee contributions shall be based on the employee's total gross salary regardless of source or employer funds from which the employee is paid. (1-1-94)

1034. -- 110. (RESERVED).

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0105-0901

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 59-1314(1) and 72-1405, 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 August 19, 2009.

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 Rule 103 to add a new Subsection 103.04 regarding interest applicable to waiting period payments.

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 it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208- 334-3408

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 59-0105-0901

103. METHODS OF REPAYMENT OF SEPARATION BENEFITS (RULE 103).

01. Periodic and Lump-Sum Payments. Where an active member elects to repay a separation benefit to reinstate previous service as provided in Section 59-1360, Idaho Code, the member may request that repayment be made in periodic payments or in a lump-sum payment. No service will be reinstated until the full repayment has been made. (3-30-01)

02. Repayments Initiated on or After March 1, 2000. For all repayments initiated on or after March 1, 2000, except as provided in Rule 101 of this chapter, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at the reinstatement rate in effect on the date of the first periodic payment. (3-30-01)

03. Repayments Initiated Before March 1, 2000. For all periodic repayments initiated before March 1, 2000, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at four point seventy-five percent (4.75%) interest. This is a grandfathered rate based on the rate in effect December 31, 1999, and will apply so long as payments exceed interest charges on a calendar year basis. If payments fail to exceed interest charges in any calendar year, the grandfathered rate will be forfeited and replaced by the reinstatement rate beginning in January immediately after the year in which the failure occurs. For purposes of these rules, a repayment is initiated by signing an agreement and making a payment. (3-30-01)

04. Repayments Under Section 59-1331(2), Idaho Code. For (waiting period) payments made pursuant to Section 59-1331(2), Idaho Code, a repayment amount shall be determined which shall be the sum of contributions that would have been made plus regular interest from December 31, 1975 until the date of the first payment. The repayment amount will be amortized over the payment period at the reinstatement rate in effect on the date of the first periodic payment. ()

IDAPA 59- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0106-0902

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 59-1314(1) and 72-1405, 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 August 19, 2009.

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 Rules 553, 554 and 576 to remove the requirement for "group" insurance related to retiree insurance for which unused sick leave dollars can be used to pay premiums. Amend Rule 554.02 to remove obligation on PERSI to deduct insurance premiums from retirement allowance once unused sick leave credits are exhausted. Make technical corrections to Rules 131, 132 and 146 to use correct cross-reference. Amend Rules 550, 552, 576 and 577 to change incorrect reference to Section 67-5339, Idaho Code to correct reference to Section 67-5333, 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208- 334-3408

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 59-0106-0902

131. ELECTED OR APPOINTED OFFICIAL WORKING FOR MULTIPLE EMPLOYERS (RULE 131).
An active member separated from employment by one (1) employer for whom he or she did normally work twenty (20) hours or more per week and who is eligible to retire but remains an elected or appointed official with a different employer, may retire and continue in that elected or appointed position provided that position is one in which he or she does not normally work twenty (20) hours or more per week. The member shall receive retirement allowances under the conditions provided by ~~Section 59-1356(2), Idaho Code~~ Rule 145.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. ~~(1-1-94)~~(____)

132. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE (RULE 132).
An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who achieves service retirement eligibility and who is not an eligible employee with another employer pursuant to Rule 101 of IDAPA 59.01.02, "Eligibility Rules of PERSI," may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by ~~Section 59-1356(2), Idaho Code~~ Rule 145.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. ~~(5-8-09)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

146. RETIRED MEMBER BECOMING AN ELECTED OR APPOINTED OFFICIAL (RULE 146).
A PERSI retired member who is subsequently elected or appointed by an employer to public office and who is not normally required to perform services of twenty (20) hours or more per week in that position may continue to receive retirement allowances in the status of a reemployed retired member under conditions outlined by ~~Section 59-1356(2), Idaho Code~~ Rule 145.

Statutory Reference: Section 59-1356, Idaho Code. ~~(1-1-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

550. COMPUTING VALUE OF SICK LEAVE (RULE 550).
For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5339~~3~~, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. (Amended 3-30-01)(~~Amended 4-11-06~~) ~~(4-11-06)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

552. SICK LEAVE FUNDING RATES (RULE 552).
The sick leave pools shall be funded by employer contributions as follows: (3-30-01)

01. State Agencies and Junior College Districts. All employer groups participating in the pools established by Sections 33-2109A and 67-5339~~3~~, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. ~~(3-30-01)(_____)~~

02. Schools. All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

Beginning:	July 1, 2006	July 1, 2011	July 1, 2012
9-10 days	1.16%	1.18%	1.21%
11-14 days	1.26%	1.35%	1.44%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually		

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. (Amended 3-30-01) (Amended 4-11-06). ~~(3-1-09)T~~

03. Subdivisions. All employer groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. ~~(3-30-01)~~

553. LIMITATION ON INSURANCE PROGRAMS (RULE 553).

The ~~group~~ health, accident, and life insurance programs maintained by employers as outlined in Sections 59-1365, ~~67-5339~~, 33-1228, and 33-2109A, Idaho Code, are limited to ~~group~~ plans where the policy holder is the employer or a consortium of employers. Insurance programs outlined in Section 67-5333, Idaho Code, shall be maintained by the employer. The board may require ~~group~~ plans to sign an agreement before participating. ~~(3-30-01)(_____)~~

554. PAYMENT OF INSURANCE PREMIUMS (RULE 554).

Upon certification by the employer and the insurance carrier that a ~~group~~ plan qualifies under Rule 553, of this chapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. ~~(1-1-94)(_____)~~

01. Adjustments. Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. ~~(3-30-01)~~

02. Duration of Payments. Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs. ~~Unless otherwise notified in writing by the member, when unused sick leave credits become depleted and are insufficient to meet additional premium payments, PERSI will continue to pay monthly premiums if the member's net monthly benefit is greater than the monthly premium, deducting the same from the member's monthly retirement allowance.~~ ~~(3-30-01)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL (RULE 576).

Any PERSI employer meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: ~~(3-30-01)~~

01. No Current Plan. The employer does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5339~~3~~, Idaho Code. ~~(3-30-01)(_____)~~

02. All Inclusive Participation. All of a participating employer's employees who are PERSI members and who accrue sick leave must be participants in the plan, except that employers may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. (3-30-01)

03. No Other Options for Unused Sick Leave. No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. (3-30-01)

04. Fixed Annual Accrual of Sick Leave. Employer must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. (3-30-01)

05. Medicare Eligible Retirees. Employer's ~~group~~ plan must provide coverage to all retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible. ~~(3-30-01)~~(____)

577. OPERATION OF SUBDIVISION POOL (RULE 577).

Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every employee of a participating employer shall, upon payment by the employer under Rule 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-5339~~3~~(1), Idaho Code. ~~(3-30-01)~~(____)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is August 26, 2009 unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0214-0901, Rules for Weights and Measures. Incorporates by reference the 2010 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.

02.06.06, Rules Governing the Planting of Beans, (*Phaseolus Spp.*), in Idaho.

02-0606-0501, Allows kidney and garden beans to be planted under the same rules as cranberry type beans which allow a 1-year history under rill irrigation in Idaho prior to planting under sprinkler irrigation rather than a 2-year history.

02-0606-0901, (Temp & Prop) Allows for the acceptance of bean seed crops grown in Malheur County, Oregon, and inspected by the Idaho Crop Improvement Assn. for planting in Idaho.

02-0617-0901, Rules Governing the Disposal of Cull Onions and Potatoes. Sets the enforcement period for cull onion disposal from March 15th through July 1st of each year.

IDAPA 08 - DEPARTMENT OF EDUCATION PO Box 83720, Boise, ID 83720-0027

08.02.02 - Rules Governing Uniformity.

08-0202-0904, Incorporates by reference the latest amendments to the Idaho Standards for the Initial Certification of Professional School Personnel as approved on June 18, 2009.

08-0202-0905, (Temp & Prop) Complies with SB 1133 by removing private driver education provisions and incorporates by reference the Idaho Operating Procedures for Public Driver Education Programs as approved on June 18, 2009.

***08-0203-0903, Rules Governing Thoroughness.** (*PH) Requires each LEA or school district to design and implement a credit system that would become effective July 1, 2010. Students entering the 7th grade at the beginning of the 2010-2011 school year would have to meet credit requirements or complete an alternate mechanism to be promoted to the 8th grade. Comment by: 9/11/09.

IDAPA 09 - DEPARTMENT OF LABOR 317 W Main St., Boise, ID 83735

09-0130-0901, Unemployment Insurance Benefits Administration Rules. Provides that benefits are the property of the claimant's estate rather than stating that benefits are payable to the administrator, who may include heirs other than a surviving spouse or dependent children.

09.01.35 - Unemployment Insurance Tax Administration Rules.

09-0135-0901, New subsection clarifies when an employer may exclude the value of lodging from an employee's gross wages.

09-0135-0902, Adds "paid" to accurately reflect that wages must be paid for reporting requirements to apply.

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS**5535 W Overland Rd., Boise, ID 83705**

***10-0101-0901, Rules of Procedure.** (*PH) Provides the Board flexibility in accepting exams offered at different frequencies, of different duration, and different organization than the current exams; clarifies that an individual must first be a licensed engineer especially qualified in a "base" discipline before taking the exam in structural engineering; reflects that exams are no longer administered directly by the Board; and clarifies the Board's right to publish disciplinary actions.

***10-0102-0901, Rules of Professional Responsibility.** (*PH) Defines "deceit" and "incompetence" and clarifies definition of "misconduct"; clarifies the standard of care and the obligations of engineers and land surveyors in reports, statements or testimony and communication with clients.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**PO Box 83720, Boise, ID 83720-0036****16.02.25 - Rules Governing Fee Charged by the State Laboratory.**

16-0225-0901, Chapter repeal.

16-0225-0902, Chapter rewrite updates definitions and the list of laboratory tests and fees offered by the Bureau of Laboratories.

16-0305-0903, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled. (Temp & Prop) Changes conform to federal laws and rules by extending Afghani immigrant benefits; clarifies that a resource excluded by federal law is not counted in determining the resource amount available; and provides for lump sum payments for retroactive Social Security benefits.

IDAPA 18 - DEPARTMENT OF INSURANCE**PO Box 83720, Boise, ID 83720-0043**

18-0113-0901, Life Settlements. New chapter implements HB 75, the Idaho Life Settlements Act, and establishes procedures for registering as a life settlement broker or provider and the requirements for filing life settlement contracts, disclosure forms and advertising materials; clarifies the process for rescinding a life settlement contract and requirements for life settlements that occur within 2 years of the policy effective date.

IDAPA 20 - DEPARTMENT OF LANDS**PO Box 83720, Boise, ID 83720-0036**

20-0101-0901, Rules of Practice and Procedure Before the State Board of Land Commissioners. Updates office address and contact and website information.

***20-0314-0901, Rules Governing Grazing Leases and Cropland Leases.** (*PH) Provides for the acceptance of lease applications for competing uses and the development of lease terms by the Department and the applicant based on pre-identified criteria; sets minimum bids at conflict auctions; establishes penalties for applicant withdrawal prior to or after a conflict auction; and changes new improvement crediting procedures for improvements approved after July 1, 2009.

IDAPA 21 - DIVISION OF VETERANS SERVICES**320 Collins Rd., Boise, ID 83702**

21-0103-0901, Rules Governing Veterans Support Fund Grant Program. (Temp & Prop) New chapter establishes a grant application and award process, sets forth eligibility criteria, and provides for the disbursement of funds

IDAPA 22 - BOARD OF MEDICINE**PO Box 83720, Boise, ID 83720-0058**

22-0101-0901, Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho. Provides Board the authority to share information with other state boards to help restrict incompetent practitioners from moving from state to state without disclosure or discovery of

previous damaging or incompetent performance.

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

PO Box 83720, Boise, ID 83720-0046

32-0101-0901, Rules Governing the Credit Enhancement Program for School Districts. (Temp & Prop) New chapter specifies application procedure for school districts seeking to participate in the Credit Enhancement Program.

IDAPA 35 - STATE TAX COMMISSION

PO Box 36, Boise, ID 83722-0410

35-0105-0901, Motor Fuels Tax Administrative Rules. (Temp & Prop) Complies with HB 338 and provides for notification to motor fuels distributors that deductions on their reports for ethanol and biodiesel cannot be claimed on or after June 1, 2009.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

1410 N Hilton, Boise, ID 83706-1255

***58-0101-0903, Rules for the Control of Air Pollution in Idaho.** (*PH) Updates citations to current federal regulations incorporated by reference.

58-0105-0901, Rules and Standards for Hazardous Waste. Updates citations to current federal regulations incorporated by reference.

IDAPA 59 - PERSI

PO Box 83720, Boise, ID 83720-0078

59-0103-0901, Contribution Rules for the Public Employee Retirement System of Idaho. Per Idaho Code provides for an additional employee contribution of .04% applicable to public safety officers.

59-0105-0901, Separation From Service Rules for the Public Employee Retirement System of Idaho. Changes regard interest applicable to waiting period payments for repayment of separation benefits.

59-0106-0902, Retirement Rules of the Public Employee Retirement System of Idaho. Removes requirement for "group" insurance related to retiree insurance for which unused sick leave dollars can be used to pay premiums; removes obligation on PERSI to deduct insurance premiums from retirement allowance once unused sick leave credits are exhausted.

NEWLY ADOPTED TEMPORARY RULES

08-0203-0904, Rules Governing Thoroughness

NOTICE OF SCHEDULED NEGOTIATED RULEMAKING MEETINGS

Department of Agriculture

02-0413-0901, Rules Governing Retail Raw Milk

02-0431-0901, Rules Governing Agricultural Waste

NOTICES OF SCHEDULED PUBLIC HEARINGS

Department of Health and Welfare

16-0305-0902, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

16-0318-0902, Medicaid Cost-Sharing

Please refer to the Idaho Administrative Bulletin, **August 5, 2009, Volume 09-8**, for all rulemaking notices and for the text of temporary, proposed and final rules, public hearings and negotiated rulemaking meeting 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 adm.idaho.gov/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK,
YOU MUST BE CONNECTED TO THE INTERNET.**

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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